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Permanent Forum on Indigenous Issues
Fifteenth session
New York, 9-20 May 2016

Provisional agenda

1. Election of officers.
2. Adoption of the agenda and organization of work.
3. Follow-up to the recommendations of the Permanent Forum.
4. Implementation of the six mandated areas of the Permanent Forum with reference to the United Nations Declaration on the Rights of Indigenous Peoples.
5. Discussion on the theme "Indigenous peoples: conflict, peace and resolution".
6. Dialogue with indigenous peoples.
7. Dialogue with Member States.
8. Dialogue with the funds, programmes and specialized agencies of the United Nations system and other intergovernmental bodies.
9. Coordination among the three United Nations mechanisms pertaining to indigenous peoples:
   (a) Coordination among the three United Nations mechanisms pertaining to indigenous peoples;
   (b) Dialogue with the Special Rapporteur on the rights of indigenous peoples and the Chair of the Expert Mechanism on the Rights of Indigenous Peoples.
10. Future work of the Permanent Forum, including issues considered by the Economic and Social Council and emerging issues.
11. Provisional agenda for the sixteenth session.
12. Adoption of the report of the Permanent Forum on its fifteenth session.

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Permanent Forum on Indigenous Issues
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Item 10 of the provisional agenda*
Future work of the Permanent Forum, including issues considered by the Economic and Social Council and emerging issues

Report of the Expert Group Meeting on Indigenous Peoples and the 2030 Agenda

Note by the Secretariat

Summary

On 22 and 23 October 2015, the secretariat of the Permanent Forum on Indigenous Issues held a two-day Expert Group Meeting on the theme "The way forward: indigenous peoples and the 2030 Agenda". The objective of the meeting was to develop action-oriented strategies and guidance to support the inclusion of indigenous peoples' issues in the 2030 Agenda for Sustainable Development. The present report provides an overview of the discussions at the Expert Group Meeting, as well as suggestions on the way forward.

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I. Introduction

1. On 25 September 2015, the General Assembly, in its resolution 70/1, adopted the 2030 Agenda for Sustainable Development, including 17 Sustainable Development Goals and 169 associated targets. The 2030 Agenda is a universal, transformative and people-centred plan to achieve sustainable development, emphasizing that no one should be left behind.

2. In order to ensure that indigenous peoples are at the centre of the 2030 Agenda, the secretariat of the Permanent Forum on Indigenous Issues held a two-day Expert Group Meeting on 22 and 23 October 2015, on the theme "The way forward: indigenous peoples and the 2030 Agenda", to develop action-oriented strategies to support the inclusion of indigenous peoples' issues in the implementation of the 2030 Agenda.

3. The meeting was structured around three main areas:

(a) Lessons learned from the Millennium Development Goals and reflections on the 2030 Agenda, including the Sustainable Development Goals;

(b) Indicators for measuring progress for indigenous peoples within the 2030 Agenda;

(c) Monitoring development progress for indigenous peoples and experiences in data collection.

4. The meeting also included a strategic brainstorming session on how to take forward the issues that were discussed during the Expert Group Meeting.

II. Organization of work

A. Attendance

5. The meeting brought together indigenous experts, other experts relevant to the theme, representatives of Member States, civil society and agencies, funds and programmes of the United Nations system that are involved in the work relating to the 2030 Agenda and indigenous peoples' issues.

6. The workshop was attended by members of the three United Nations mechanisms on indigenous issues: the Chair of the Permanent Forum on Indigenous Issues, Megan Davis, and the Vice-Chair of the Permanent Forum, Joan Carling; the Chair of the Expert Mechanism on the Rights of Indigenous Peoples, Alexey Tsykarev; and the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz.

B. Documentation

7. The participants had before them a draft agenda and programme of work, a concept note on the theme and documents prepared by the participating experts. The documents are available on the Permanent Forum's website (www.un.org/development/desa/indigenouspeoples/meetings-and-workshops/egm-on-indigenous-peoples-and-agenda-2030-for-sustainable-development.html).

C. Opening of the meeting

8. At the opening of the meeting, statements were delivered by the Director of the Division for Social Policy and Development of the Department of Economic and Social Affairs, the Chair of the Permanent Forum on Indigenous Issues and the Secretary of the Permanent Forum.

D. Closing of the meeting

9. At the closing session, the Secretary of the Permanent Forum summarized the main findings and suggestions on the way forward.

III. Background on the 2030 Agenda for Sustainable Development and indigenous peoples

10. The present section provides an overview of the 2030 Agenda for Sustainable Development, with a focus on the aspects of the 2030 Agenda that are most relevant to indigenous peoples.

11. The process to formulate the 2030 Agenda for Sustainable Development is described as one of the most inclusive in the history of the United Nations. Indigenous peoples were one of the nine major groups[1] involved in consultations and discussions in the lead-up to the adoption of the 2030 Agenda. This was different from the development of the Millennium Development Goals, during which indigenous peoples were largely invisible. The processes towards adopting the 2030 Agenda were an opportunity to remedy the shortcomings and gaps of the Millennium Development Goals.

12. On 25 September 2015, the General Assembly adopted its resolution 70/1, entitled "Transforming our world: the 2030 Agenda for Sustainable Development". The new 2030 Agenda for Sustainable Development comes into effect on 1 January 2016 and will carry through the next 15 years. It is a broad and universal policy agenda, with 17 Sustainable Development Goals and 169 associated targets, which are described as integrated and indivisible. The 2030 Agenda contains several sections: (a) the preamble; (b) the political declaration; (c) the Sustainable Development Goals and targets; (d) the means of implementation; and (e) follow-up and review, which includes review at the national, regional and global levels.

The 2030 Agenda and the Sustainable Development Goals

13. The 2030 Agenda contains numerous elements that can go towards articulating the development concerns of indigenous peoples. Of significance is the fact that human rights principles and standards are strongly reflected in the 2030 Agenda. The 2030 Agenda is explicitly guided by the purposes and principles of the Charter of the United Nations and is grounded in the Universal Declaration of Human Rights and international human rights treaties (para. 10). It emphasizes the

[1] The nine major groups comprise: women; children and youth; indigenous peoples; non-governmental organizations; local authorities; workers and trade unions; business and industry; scientific and technological community; and farmers.

responsibilities of States to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status (para. 19).

14. The 2030 Agenda has an overall focus on reducing inequalities. This is of particular relevance to indigenous peoples, who are almost universally in situations of disadvantage vis-à-vis other segments of the population. The overarching pledge of the 2030 Agenda aims to leave no one behind and to reach the furthest behind first (para. 4). It aims to combat inequalities within and among countries (para. 3); identifies rising inequalities as a challenge that must be confronted (para. 14); and pledges that the Goals and targets are to be met for all peoples and for all segments of society (para. 4). Goal 10 of the 2030 Agenda is specifically dedicated to reducing inequality within and among countries.

15. Beyond this overarching framework, there are six specific references to indigenous peoples in the 2030 Agenda: three in the political declaration, two in the targets and one in the section on follow-up and review. In the political declaration, indigenous peoples are referred to as people who are vulnerable and must be empowered in a list that also includes all children, youth, persons with disabilities, people living with HIV/AIDS, older persons, refugees and internally displaced persons and migrants (para. 23). Also in the political declaration, Member States commit to providing inclusive and equitable quality education at all levels to all people, including indigenous peoples (para. 25). Member States also specifically referenced indigenous peoples as among the groups to be involved in the journey on the road to 2030 (para. 52).

16. With respect to the Sustainable Development Goals, many of them are of relevance to indigenous peoples, including those that relate to the major human rights and development issues faced by indigenous peoples around the world, as well as the rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples. Goals that relate especially to development priorities of indigenous peoples include:

- Goal 1. End poverty in all its forms everywhere
- Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture
- Goal 3. Ensure healthy lives and promote well-being for all at all ages
- Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
- Goal 5. Achieve gender equality and empower all women and girls
- Goal 13. Take urgent action to combat climate change and its impacts
- Goal 15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss
- Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

17. Many of the 169 targets in the 2030 Agenda are potentially relevant for indigenous peoples, including those that link to the Goals mentioned above. Of particular note is that indigenous peoples are specifically referred to in two of the targets: target 2.3 aims, by 2030, to double the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, and target 4.5 aims to eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including indigenous peoples.

Follow-up and review

18. Beyond the substantive text of the 2030 Agenda, there are opportunities for indigenous peoples to be included in the implementation of the 2030 Agenda. Follow-up and review of the 2030 Agenda will be carried out at the national, regional and international levels. The review processes will be voluntary and country-led and will take into account national realities, capacities and levels of development (para. 74 (a)). The review processes will be open, inclusive, participatory and transparent for all people and will support reporting by all relevant stakeholders (para. 74 (d)). Reviews at all levels will also respect human rights and have a particular focus on the poorest, most vulnerable and those furthest behind (para. 74 (e)).

19. The follow-up and review will be carried out using a set of global indicators, which will be complemented by indicators at the regional and national levels to be developed by Member States (para. 75). Work is ongoing to develop an indicator framework for the monitoring of the Goals and targets at the global level. This work is being coordinated by the Inter-Agency and Expert Group on Sustainable Development Goal Indicators, which was established by the Statistical Commission and comprises chief statisticians from Member States around the world. The global indicator framework is to be agreed upon by the Statistical Commission by March 2016 and, thereafter, adopted by the Economic and Social Council and the General Assembly (ibid.). In the process of the development of a global indicator framework, the Inter-Agency and Expert Group has provided opportunities for inputs and proposals through open consultations with civil society, academia and the private sector. Indigenous representatives have also contributed to this process, for instance for the open consultations leading up to the second meeting of the Inter-Agency and Expert Group, held in Bangkok from 26 to 28 October 2015.[2] Global review will be based primarily on national official data sources (para. 74 (a)).

20. At the national level, Member States will have to carry out a process of adaptation of priority Goals and targets to their country-specific context. Therefore, while the Sustainable Development Goals are global in nature, they are aspirational, and each Government will set its own national targets, taking into account national circumstances (para. 55). The 2030 Agenda encourages Member States to develop as soon as practicable ambitious national responses to the overall implementation of the Agenda (para. 78). The national responses can build upon existing sustainable development strategies. The review of the 2030 Agenda will be country-led and country-driven. Member States are encouraged to conduct regular and inclusive reviews of progress at the national and subnational levels. The Agenda notes that

[2] For more information, see: http://unstats.un.org/sdgs/iaeg-sdgs/open-consultation-stakeholders.

such reviews should draw on contributions from indigenous peoples, civil society, the private sector and other stakeholders, in line with national circumstances, policies and priorities (para. 79).

21. At the global level, the 2030 Agenda lays out a framework for global follow-up and review of achievement of the Sustainable Development Goals. Many of the specific modalities of the process are still being developed. The central United Nations platform for follow-up and review is the high-level political forum on sustainable development, which will play a central role in overseeing a network of follow-up and review processes at the global level and provide political leadership, guidance and recommendations for follow-up (para. 82). It will focus on the assessment of progress, achievements and challenges faced by both developed and developing countries. The reviews shall provide a platform for partnerships, including through the participation of major groups and other relevant stakeholders (para. 84). The high-level political forum will also engage in thematic reviews of progress on the Sustainable Development Goals.

22. The functional commissions of the Economic and Social Council and other forums will support the thematic reviews of progress on the Sustainable Development Goals (para. 85). As a subsidiary body of the Council, the Permanent Forum on Indigenous Issues has a role to play in this process. The high-level political forum will also support the participation of the major groups, which includes indigenous peoples, in the follow-up and review. The major groups are called upon in the 2030 Agenda to submit their own reports on their contribution to the implementation of the 2030 Agenda (para. 89).

23. There is a call in the 2030 Agenda for action by the United Nations: Member States stress the importance of system-wide strategic planning, implementation and reporting to ensure coherent and integrated support to the implementation of the new Agenda (para. 88). The United Nations is encouraged to review such support to implementation and to report on progress and obstacles. Of relevance in this regard is the system-wide action plan for ensuring a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples, which was mandated in the outcome document of the World Conference on Indigenous Peoples,[3] held in 2014. The system-wide action plan includes six action elements, one of which relates to the implementation of the 2030 Agenda, and could be used as an entry point for increasing coherent and integrated support for the implementation of the Agenda for indigenous peoples.

IV. Meeting highlights and conclusions

Reflections on the Millennium Development Goals and the 2030 Agenda

24. The participants at the Expert Group Meeting considered the 2030 Agenda to be an improvement over the Millennium Development Goals for indigenous peoples. Shortcomings of those Goals for indigenous peoples that had been previously noted and were highlighted at the meeting included: failure of the Goals to adequately capture or consider the development priorities of indigenous peoples; lack of adequate participation of indigenous peoples during the design and implementation of the Goals; and lack of appropriate monitoring by means of

[3] Resolution 69/2.

disaggregated data on indigenous peoples, which had the effect of masking or distorting their development situation.[4] Furthermore, efforts to achieve the Millennium Development Goals at the national level sometimes resulted in the implementation of development programmes that were inappropriate for indigenous peoples, for example in the area of poverty reduction, which measures poverty in strict numeric terms and does not necessarily reflect indigenous peoples' concepts of well-being.

25. The participants agreed that it was important to reflect on the broader lessons learned from the Millennium Development Goals. That experience demonstrated that goals and targets could be used to draw attention to and promote certain previously neglected development issues and policy priorities. In this regard, the experience of the Millennium Development Goals highlighted that the effectiveness of the 2030 Agenda would depend on how it would be used to leverage political will and to mobilize action by Governments, donors, the United Nations system and other actors at the implementation stage. At the same time, it was also important to ensure that the 2030 Agenda did not set out the only development paradigm while obscuring other priorities. It was thus important not to lose sight of development priorities for indigenous peoples that were not explicitly referenced in the text or to limit global action related to indigenous peoples to merely addressing outcome gaps.

26. Participants highlighted that there were both opportunities and challenges in the Sustainable Development Goals and targets of the 2030 Agenda. The overall focus of the 2030 Agenda on reducing inequalities and on reaching those furthest behind was highly relevant to indigenous peoples, who faced many development disadvantages. In addition, the specific mention of indigenous peoples in two targets, as well as in the follow-up and review, was a positive step. Other positive references included those Goals and targets relating to land security, data disaggregation, eliminating discriminatory laws, promoting inclusive societies and combating climate change, among others. However, some Goals and targets, such as Goal 7, on ensuring energy for all, could pose risks for the rights of indigenous peoples, particularly their rights to lands, territories and resources, which in numerous situations had come under threat owing to major development projects.

27. Participants also stated that, given the potential opportunities and challenges, it was important to start framing a narrative about indigenous perspectives of the 2030 Agenda. This would include framing the 2030 Agenda in terms of human rights, especially those affirmed in the United Nations Declaration on the Rights of Indigenous Peoples. Such framing was necessary to ensure that the implementation of certain Goals and targets did not contravene the rights of indigenous peoples. It might be useful in this regard to develop a document that laid out the indigenous view of the 2030 Agenda. The three United Nations mechanisms, namely the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of indigenous peoples, could take a leading role in this effort.

28. Concurrent with efforts at the international level, it was also important to raise awareness about Agenda 2030 and strengthen the capacity of indigenous peoples' own institutions to make use of and implement the Goals and targets. Efforts should

[4] See the reports of the Permanent Forum on Indigenous Issues on the fourth and fifth sessions (E/2005/43-E/C.19/2005/9 and Corr.2 and E/2006/43-E/C.19/2006/11, respectively).

aim to build on existing innovative work by indigenous peoples to operationalize and measure their well-being. It was also necessary to analyse how indigenous peoples could use the Goals and targets effectively for fundraising, policy development and other efforts. Furthermore, it was important to identify potential partners with whom to cooperate at the national, regional and international levels (e.g. within the United Nations system, national human rights institutions and the private sector) in the implementation of the 2030 Agenda.

Indicators and data collection

29. The process for developing global indicators was ongoing. The Statistical Commission was expected to agree on the indicator framework and a set of indicators for the 2030 Agenda in March 2016. Participants made concrete proposals for indicators to be included in the global indicator framework, including: (a) changes to the wording of the draft indicator on land security to include a reference to indigenous peoples and measuring collective land tenure security; and (b) calling for data disaggregation by ethnic/indigenous status in priority targets. Those proposals had been put forward for the consideration of Member States on how to address indigenous peoples' main priorities when deciding on the global indicator framework.

30. Participants considered that, beyond the global framework, it would be important to develop indigenous-specific indicators for parallel efforts by indigenous peoples to measure progress in indigenous peoples' own development priorities, as well as progress for indigenous peoples in the implementation of the 2030 Agenda. Some indigenous organizations, non-governmental organizations, United Nations agencies and others had already made significant headway in developing indigenous-specific indicators, including proposed indicators related to the Sustainable Development Goals.[5] Indigenous-specific indicators should be grounded in the rights of indigenous peoples as affirmed in the United Nations Declaration on the Rights of Indigenous Peoples. It would also be necessary to contextualize indigenous-specific indicators to particular situations within a certain country or region. This could be facilitated by developing indicators through a participatory methodology.

31. Participants emphasized the relevance of indigenous-specific indicators for various actors at the national, regional and international levels. They might be used at the national level in data collection and country-led reporting on the Sustainable Development Goals. They could also be used by agencies, funds and programmes of the United Nations system, indigenous peoples themselves, non-governmental organizations and other actors to measure progress in the implementation of the 2030 Agenda for indigenous peoples or in highlighting some of the specific development priorities of indigenous peoples that were not reflected in the 2030 Agenda. The development of a clear set of indigenous-specific indicators was one of the main priority areas for the way forward in implementing the 2030 Agenda, and more work needed to be done in that regard.

32. Beyond indigenous-specific indicators, a priority for measuring progress in the implementation of the 2030 Agenda was the disaggregation of data by

[5] See, for instance, Indigenous Navigator (www.indigenousnavigator.org) and the proposal on indicators from the indigenous peoples major group (http://sustainabledevelopment.un.org/majorgroups/indigenouspeoples).

ethnic/indigenous status. In paragraph 10 of the outcome document of the World Conference on Indigenous Peoples, Member States committed themselves to working with indigenous peoples to disaggregate data and to utilizing holistic indicators of indigenous peoples' well-being. Potential proxies or other relevant classifications for disaggregation could include geographical areas, prohibited grounds of discrimination and languages, among others, and could be considered where disaggregation by ethnic/indigenous status was not possible owing to political or other reasons. Agencies, funds and programmes of the United Nations system could assist in collecting such disaggregated data, where possible, and in compiling and disseminating such data, where available. The work of the Economic Commission for Latin America and the Caribbean in compiling existing data on indigenous peoples in the Latin American region was a good practice in that regard.

33. There were existing experiences at the national and community levels in data collection on indigenous peoples from which to draw. Those experiences included both State- and indigenous-led efforts. Experiences in data collection on indigenous peoples should be shared further. Lessons learned showed that it was important to build trust and to communicate how data could be used and how that would be of benefit to indigenous communities on an ongoing basis. Participants also agreed on the importance of community-based monitoring. In that regard, it was necessary for indigenous peoples to continue to develop methodologies to monitor indicators at the local level in order to, among others, produce shadow reports at the national and global levels. Building research capacity would be necessary both for national statistical offices and for indigenous peoples.

34. With respect to data collection, the creation of an indigenous sustainability and well-being index, which could be linked to the 2030 Agenda, was discussed by the participants. Challenges in developing such an index included political will, gathering and handling complex data, aggregation and scalability across levels, and defining globally relevant indicators that still reflected local contextual differences, as well as ensuring compatibility with national statistical offices and data quality requirements. The issue of indigenous identification was also noted as a challenge that could be overcome by linking identification to a normative purpose and to the United Nations Declaration on the Rights of Indigenous Peoples. Also discussed was whether an index should focus primarily on outcomes or also capture the means of implementation (such as finance, capacity, technology and partnerships). It was emphasized that an index should build on existing initiatives and experiences, much like the Indigenous Navigator. The Permanent Forum on Indigenous Issues could play a role in coordinating the development of such an index.

Implementation of the 2030 Agenda

35. The participants agreed that it would be important for indigenous peoples to be involved in the next stages of implementation of the 2030 Agenda. There were several upcoming opportunities for indigenous peoples to participate in and help to define the way forward. It was recommended that action be taken in all areas.

36. The 2030 Agenda required that each Government set its own national targets, guided by national circumstances, and decide how to incorporate the targets in national planning processes, policies and strategies. It was important for indigenous peoples to participate in that process and for their development priorities to be included in the national-level implementation frameworks. Agencies, funds and programmes of the United Nations system at the country level could assist in this

process as they provide support and guidance to Member States. The mechanisms for drawing on the contributions of indigenous peoples in national-level reviews, as referenced in paragraph 79 of the 2030 Agenda, could also be developed further at the country level, with support from the United Nations system within existing resources. In this regard, indigenous peoples could participate in the multi-stakeholder national workshops that would be piloted in nine countries, led by the United Nations Development Group, to discuss how national policies could be aligned with the 2030 Agenda. It might also be helpful to develop indigenous-specific pilot programmes.

37. Participants felt that there were still opportunities to influence the process of follow-up and review at the global level, in which indigenous peoples could be further involved. It was important that the process of follow-up and review be as inclusive as possible and include the participation of indigenous peoples. In particular, the Permanent Forum on Indigenous Issues, as a subsidiary body of the Economic and Social Council, could play an important role in the thematic follow-up to the 2030 Agenda for indigenous peoples. This could involve, for example, including a standing or recurrent agenda item in the Permanent Forum's programme of work on contribution to the high-level political forum on the review, follow-up and implementation of the 2030 Agenda and/or mainstreaming follow-up to the 2030 Agenda and Sustainable Development Goals into its work.

38. In the 2030 Agenda, indigenous peoples were requested, as one of the major groups, to report on their contribution to the implementation of the Sustainable Development Goals, including within the framework of the high-level political forum. It would be important for indigenous peoples to develop methodologies for carrying out such reporting at the global level. The three United Nations mechanisms with mandates concerning indigenous peoples, as well as the agencies, funds and programmes within the United Nations system, including at the country level, could have a role to play in assisting indigenous peoples in such monitoring and reporting. Indigenous peoples could also explore other reporting opportunities, for example before international human rights monitoring bodies, including the universal periodic review process of the Human Rights Council, the United Nations treaty bodies and the regional human rights mechanisms.

V. Conclusions and suggestions on the way forward

39. The participants agreed that the following steps must be taken in relation to ensuring indigenous priorities in the implementation of the 2030 Agenda:

(a) Continue advocating for indigenous indicator priorities (data disaggregation and land indicator) in the final processes of developing the global monitoring framework for the Sustainable Development Goals through the Inter-Agency and Expert Group on Sustainable Development Goal Indicators, which is to be agreed upon by the Statistical Commission (8-11 March 2016) and, thereafter, adopted by the Economic and Social Council and the General Assembly;

(b) Identify the role of the Permanent Forum on Indigenous Issues, as a subsidiary body of the Economic and Social Council, in providing thematic follow-up to the 2030 Agenda for indigenous peoples through the high-level political forum. Furthermore, there is a need to discuss possible ways to mainstream and include a review of the 2030 Agenda as a recurrent agenda item in the Permanent Forum's programme of work;

(c) Support indigenous peoples, as one of the major groups, in reporting on their contribution to the implementation of the Sustainable Development Goals. There is also a need to identify how the three United Nations mechanisms, namely the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of indigenous peoples, can provide support;

(d) Frame a narrative about indigenous peoples' perspectives of the 2030 Agenda. The narrative could be grounded in human rights, as well as the United Nations Declaration on the Rights of Indigenous Peoples. The three United Nations mechanisms could take a leading role in this effort by developing an initial document;

(e) Ensure a coherent United Nations approach to planning, implementation and reporting on the 2030 Agenda for indigenous peoples that is in line with the system-wide action plan for ensuring a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples, particularly the action points relating to the 2030 Agenda;

(f) Ensure that indigenous peoples participate in national-level processes to plan, implement and monitor national frameworks for the 2030 Agenda: agencies, funds and programmes of the United Nations system at the country level can play a central role in assisting Member States in facilitating indigenous peoples' participation; and ensure indigenous peoples' participation in the multi-stakeholder national workshops that will be piloted in nine countries, led by the United Nations Development Group, in 2016;

(g) Raise awareness and build capacities among indigenous peoples to make use of the 2030 Agenda to leverage support and political will, develop policies and mobilize action by Governments, donors, the United Nations system and other actors on the political priorities of indigenous peoples. Furthermore, there is a need to map possible stakeholders and build partnerships with indigenous peoples during the implementation of the 2030 Agenda at the national level;

(h) Improve national-level data collection and sharing of disaggregated data that highlight the progress made on indigenous peoples' priorities. Agencies, funds and programmes of the United Nations system could assist in collecting disaggregated data, where possible, and in compiling and disseminating such data, where available;

(i) Develop indigenous-specific indicators for parallel efforts to measure progress in indigenous peoples' own development priorities, as well as in the implementation of the 2030 Agenda, within existing resources. This includes taking the discussions forward on developing a global "indigenous sustainability and well-being index" based on existing initiatives. There is a need to identify the role of the Permanent Forum on Indigenous Issues in this process;

(j) Build research capacity for national statistical offices and for indigenous peoples to report on indigenous priorities, disaggregate data and measure the progress of indigenous peoples across the Sustainable Development Goals, including the development of methodologies to monitor indicators at the local level with the purpose of doing shadow reports at the national and global levels. In this regard, the United Nations system, within existing resources, and others could provide support.

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Follow-up to the recommendations of the Permanent Forum

Study on the relationship between indigenous peoples and the Pacific Ocean

Note by the secretariat

Summary

At its fourteenth session, the Permanent Forum appointed Valmaine Toki, a member of the Permanent Forum, to conduct a study on the relationship between indigenous peoples and the Pacific Ocean, taking into account issues of governance, the effects of climate change, deep sea mining, resources and sustainable development (see E/2015/43, para. 44). The outcome of the study and the recommendations related thereto are set out in the report, which is hereby submitted to the Permanent Forum at its fifteenth session.

* E/C.19/2016/1.

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Study on the relationship between indigenous peoples and the Pacific Ocean

I. Introduction

1. Oceans cover nearly 75 per cent of the Earth's surface, contain more than 97 per cent of the Earth's water and represent 99 per cent of the living space on the planet by volume. Over 3 billion people depend on marine and coastal biodiversity for their livelihoods. Oceans absorb about 30 per cent of the carbon dioxide produced by humans, thereby buffering the impacts of global warming. As much as 40 per cent of the world's oceans are heavily affected by human activities, including pollution, depleted fisheries and loss of coastal habitats. It is no surprise that oceans serve as a critical component of the world's ecosystem. Prudent management of the world's oceans is a key feature for a sustainable future.

2. World Oceans Day, which is commemorated on 8 June each year, was designated by the General Assembly in order to celebrate and take action on oceans. The United Nations has urged communities to ensure that the oceans remain clean and healthy and to recognize the importance of ocean ecosystems, their capacity to withstand damage caused by human activities and the role they play for the future of sustainable development. In his message on World Oceans Day 2015, the Secretary-General stated the following:[1]

> Oceans are an essential component of the Earth's ecosystem, and healthy oceans are critical to sustaining a healthy planet. Our oceans regulate the climate and process nutrients through natural cycles while providing a wide range of services, including natural resources, food and jobs that benefit billions of people. Given how critical oceans are to the health of our planet and the prosperity of people, they are an essential element in our emerging vision for sustainable development, including the new set of sustainable development goals now being prepared to guide the global fight against poverty for the next 15 years.
>
> Climate change poses a great challenge for the health and productivity of the oceans. The science is clear: humans have caused changes to the climate system that are linked to the warming of oceans. Sea levels are rising, with devastating effects on vulnerable communities, especially people living in small island developing States.
>
> World Oceans Day is a chance to strengthen our resolve to appreciate, protect and restore our oceans and their resources. The oceans are vast — but their capacity to withstand human damage is limited. In this potentially pivotal year, we must commit to using the gifts of the oceans peacefully, equitably and sustainably for generations to come.

3. Echoing that message, the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO) stated that a sustainable planet could not exist without a healthy ocean.[2] On 25 September 2015, the General Assembly adopted resolution 70/1, entitled "Transforming our world: the 2030 Agenda for

[1] Available from www.un.org/sg/statements/index.asp?nid=8708.
[2] See http://unesdoc.unesco.org/images/0023/002331/233141E.pdf.

Sustainable Development", in which the oceans and seas were recognized as an important resource of sustainable development. The Assembly recognized that social and economic development depended on the sustainable management of the planet's natural resources, and it therefore determined to conserve and sustainably use oceans and seas, freshwater resources, as well as forests, mountains and drylands and to protect biodiversity, ecosystems and wildlife.

4. Indigenous peoples rely on the oceans, the seabed and the associated environments for their food, health, economic activities and cultural practices. All activities that have a negative impact on the oceans will have disastrous effects on the health, lives, economies and cultures of indigenous peoples, which, in turn, will only exacerbate their already poor living conditions and life expectancy for future generations. On 9 December 2013, during the sixty-eighth session of the General Assembly, Margo Deiye of Nauru, in association with the Pacific Islands Forum, stated that island nations had a unique dependence on oceans and that the sustainable use of marine resources was a key tool for eradicating poverty for present and future generations.[3] The importance of the oceans to the indigenous peoples of the Pacific cannot be overstated, yet their ability to meaningfully participate in decision-making on matters that will have a direct impact on oceans and on their environments is limited.

5. Various issues, including deep sea mining and the ability to maintain and develop resources sustainably, make it urgent for indigenous peoples to engage in the governance of oceans and the seabed. The urgent need to address the impacts of climate change on the indigenous peoples of the Pacific drives this requirement of governance.

6. The key provisions of the United Nations Declaration on the Rights of Indigenous Peoples that recognize the rights of indigenous peoples to the ocean and its environs are addressed in section II of the present report. An examination of the United Nations processes that govern the oceans is set out in section III, and an overview of the Pacific region is provided in section IV, followed by case studies of selected countries in section V, in order to highlight the importance of governance, the deleterious impacts of climate change and deep sea mining on the ocean and the importance of sustainable development for indigenous peoples living in the Pacific region. Sections VI and VII provide conclusions and recommendations to highlight the importance of upholding the right of indigenous peoples to meaningful participation in the governance of the oceans.

II. United Nations Declaration on the Rights of Indigenous Peoples

7. For indigenous peoples, the scope of their rights to their lands, territories and oceans is not limited to the orthodox perception of a sea boundary but extends to the seabed. For them, there is no distinction between lands above and lands below their waters. Governance of the oceans and its environs is pivotal to the cultures, health and welfare of all indigenous peoples, in particular those of the Pacific region.

[3] See meetings coverage of sixty-second and sixty-third meetings, 9 December 2013, available from http://www.un.org/press/en/2013/ga11466.doc.htm.

8. This relationship is emphasized in the Declaration. Article 3 provides that indigenous peoples have the right of self-determination and that, by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development. Together, articles 3, 25, 26 and 32 of the Declaration not only recognize that indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas but also provide clear grounds for the right of indigenous peoples in the Pacific region to govern the ocean. Therefore, any activity that takes place within indigenous peoples' traditionally owned or otherwise occupied and used lands, such as seabed mining, requires their free, prior and informed consent (articles 19 and 32). In addition, States are required to recognize and protect these lands and resources, provide effective mechanisms for redress and take steps to mitigate any adverse impacts (article 32).

9. Furthermore, indigenous peoples have the right to protect and conserve their environment, including fish stocks, seabed and mineral deposits, and States must take steps to ensure this right (article 29). The Declaration explicitly states that any legislation or administrative measures, such as the granting of seabed mining licences, require the free, prior and informed consent of indigenous peoples (article 19).

III. United Nations system

10. The United Nations system is complex and multilayered. Intrinsic to examining the United Nations system as it relates to oceans, a discussion of UN-Oceans and the International Seabed Authority is outlined below. The discussion provides the context for the rights of indigenous peoples with regard to oceans, and in particular to mitigating the impacts of climate change and seabed mining.

11. In 1992, the United Nations Conference on Environment and Development adopted Agenda 21, which was aimed at preparing the world for the challenges of the next century. The protection of the oceans and the seas and their environs is articulated in chapter 17. In 1993, in order to adopt a coordinated and comprehensive response to support chapter 17, United Nations agencies involved with oceans and coastal issues formed the Subcommittee on Oceans and Coastal Areas of the Administrative Committee on Coordination. Following consultations among programmes and agencies of the United Nations system involved in the coordination of oceans and coasts, a new inter-agency coordinating mechanism was developed. In 2003, the creation of an ocean and coastal areas network was approved, which would subsequently be named "UN-Oceans".

12. UN-Oceans is an inter-agency mechanism that seeks to enhance the coordination, coherence and effectiveness of competent organizations of the United Nations system, such as the International Seabed Authority and the secretariat of the Convention on Biological Diversity, in conformity with the United Nations Convention on the Law of the Sea. UN-Oceans has been meeting on an annual basis since 2005 and is mandated, inter alia, to strengthen and promote the coordination and coherence of United Nations system activities related to oceans and coastal areas.[4]

[4] See General Assembly resolution 68/70, annex, for the terms of reference for UN-Oceans.

13. In 2013, the General Assembly adopted resolution 68/70, by which it recognized the work undertaken by UN-Oceans and approved the revised terms of reference, with a revised mandate. The terms of reference will be reviewed by the Assembly at its seventy-second session, in the light of the work of UN-Oceans.

14. The International Seabed Authority was established under the 1982 United Nations Convention on the Law of the Sea. Through the Authority, States parties to the Convention organize and control activities outside of the territorial waters of individual countries, in order to administer the resources of the "area",[5] including the granting of exploration licences. States and State-sponsored companies proposing to engage in exploration or exploitation of area resources must obtain approval from the Authority. It should be noted that, in this process, there is no provision for indigenous peoples' voices to be heard in decision-making and monitoring.

15. As of 1 June 2015, 22 contracts for exploration in the "area" had entered into force (14 for exploration for polymetallic nodules, 5 for exploration for polymetallic sulphides, and 3 for exploration for cobalt-rich ferromanganese crusts) (see ISBA/21/LTC/8/Rev.1, para. 2). Since July 2014, five new contracts were signed, including a contract for exploration for cobalt-rich ferromanganese crusts with the Ministry of Natural Resources and Environment of the Russian Federation, in an area on the Magellan Mountains in the Pacific Ocean, signed on 10 March 2015. In July 2015, the Authority signed an exploration contract for polymetallic nodules with UK Seabed Resources Ltd. in an area in the Clarion-Clipperton fracture zone and an exploration permit covering 72,745 square kilometres (28,087 square miles) in the Pacific with China Minmetals Corp., sponsored by the Government of China, bringing the total number of permits issued to China to four. China has secured the most permits from the Authority.[6] These contracts enable Governments and private companies to operate in international waters.

16. Although seabed mining is not new, recent technological developments, together with global demand, have resulted in what is likened to a gold rush.[7] Deep sea mining is governed by part XI of the Convention and is regulated by a raft of obligations to protect and preserve the marine environment.

17. Researchers have recommended that, as part of its strategic plans to protect deep-seabed habitats and manage mining impacts, the International Seabed Authority should adopt a precautionary approach before granting additional large claim areas for deep seabed mining.[8] A precautionary approach is important to ensure sustainability and is synonymous with indigenous world views, according to many of which, the environment is like a person. Living sustainably with the environment is a tenet that underpins the cultures of indigenous peoples.

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[5] Article 1 of the United Nations Convention on the Law of the Sea defines "area" as the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.

[6] See Associated Press, "UN body issues exploration contracts as era of deep sea mining nears", *Japan Times*, 26 July 2015. Available from www.japantimes.co.jp/news/2015/07/26/world/science-health-world/u-n-body-issues-exploration-contracts-era-deep-seabed-mining-nears/#.Vszl5-ZQXpc.

[7] David Shukman, "Deep sea mining licenses issued", *BBC News*, 23 July 2014. Available from www.bbc.com/news/science-environment-28442640.

[8] L. M. Wedding and others, "Managing mining of the deep seabed", *Science*, vol. 349, No. 6244 (July 2015), pp. 144-145. Available from http://science.sciencemag.org/content/349/6244/144.full.

IV. Pacific Ocean

18. The Pacific Ocean is the largest of the Earth's oceans. It extends from the Arctic Ocean in the north to the Antarctic Ocean in the south, and is bounded by Asia and Australia in the west, and the Americas in the east. With an area of 165.2 million km^2 (63.8 million square miles), the Pacific Ocean covers approximately one third of the Earth's surface and about 46 per cent of the Earth's water surface. It is larger than Earth's entire landmass of some 150 million km^2 (58 million square miles).

19. In 2008, there were an estimated 9.5 million indigenous people in the South Pacific.[9] For the indigenous peoples of the Pacific, the Pacific Ocean is pivotal to their culture and well-being. Not only do they rely on the ocean for sustenance, but their relationship with the ocean is governed in accordance with their culture and, prior to colonization, they managed this resource sustainably. This intrinsic relationship is recognized and articulated in the Declaration on the Rights of Indigenous Peoples.

20. Environmental threats, including climate change and pollution, adversely affect those rights. The detrimental effects of climate change threaten not only the existence of the indigenous peoples of the Pacific, but also the continuation of their cultures. Rising sea levels result in severely reduced food production and reduction in potable drinking water. The flow-on effects include relocation of families and attendant alienation from their cultures and wider family structures. That threat aggravates the already vulnerable position of small island Pacific States. Overfishing and the destruction and exploitation of natural resources through deep sea mining further exacerbate those threats.

21. Goal 14 of the post-2015 development agenda is to "conserve and sustainably use the oceans, seas and marine resources for sustainable development". In its resolution 70/1 adopting the agenda, the General Assembly highlighted the climate change challenges faced by small Pacific island States:

> Climate change is one of the greatest challenges of our time and its adverse impacts undermine the ability of all countries to achieve sustainable development. Increases in global temperature, sea level rise, ocean acidification and other climate change impacts are seriously affecting coastal areas and low-lying coastal countries, including many least developed countries and small island developing States. The survival of many societies, and of the biological support systems of the planet, is at risk (para. 14).

22. As indigenous peoples of the Pacific are vulnerable to climate change, they must be empowered. It is essential that effective measures are taken to remove obstacles and strengthen support to meet the special needs of the indigenous peoples of the Pacific who are facing complex humanitarian emergencies as a result of climate change.

23. Indigenous peoples have an intrinsic relationship with their environment, which is underpinned by reciprocity and interdependence. Many Pacific island States have implemented policy and legislative measures to protect and maintain the traditional knowledge of their indigenous peoples by including this relationship in

[9] Eric L. Kwa, "Climate change and indigenous people in the South Pacific", paper presented at the IUCN Academy of Environmental Law Conference on "Climate law in developing countries post 2012: North and South perspectives", Ottawa, Canada, 26-28 September 2008.

their respective Constitutions. For instance, one of the key goals of the Environmental Management and Conservation Act (2002) of Vanuatu is the protection, promotion and strengthening of fundamental traditional values and principles pertinent to biological conservation and sustainable use.[10] A similar legislative arrangement is provided for in the Conservation Areas Act (1978) and the Fauna (Protection and Control) Act (1966) of Papua New Guinea.[11] Notwithstanding the inclusion of provisions relating to traditional knowledge in different pieces of legislation across the Pacific islands, legislation, by its very nature, is not flexible enough to capture and cater for the adverse effects of climate change, including its associated problems such as climate change refugees, rising water levels and access to water, and protection of traditional lands in the context of deep sea mining.

V. Case studies

A. Kiribati: climate change

24. Kiribati gained independence from the United Kingdom of Great Britain and Northern Ireland in 1979. Kiribati comprises 33 atolls and reef islands covering a total land area of 800 square kilometres dispersed over 3.5 million square kilometres, with a population of about 100,000. Kiribati is vulnerable to rising sea levels resulting from the impact of climate change.

25. The World Bank forecasts that the capital on Tarawa Atoll, where 50 per cent of the population live, will, as a result of climate change, experience increased coastal flooding unless significant climate adaption is undertaken. If no effective action is taken, relocation will be the only alternative. Abaiang villages have already been relocated owing to severe coastal erosion and saltwater intrusion. The creation of a climate change displacement coordination facility would enable organized migration and planned relocation, as well as compensation to people fleeing rising sea levels, extreme weather and ruined agriculture.[12] There has been resistance from some countries, such as Australia and New Zealand, to relocating people in the Pacific region who are affected by climate change. In September 2015, the refugee application of Ioane Teitiota, a Kiribati national seeking asylum in New Zealand on the grounds of climate change, was refused.[13]

26. In addressing the General Assembly on 9 December 2013, the Permanent Representative of Kiribati to the United Nations, Makurita Baaro, stated that a major challenge for Kiribati was to address the adverse effects of climate change on food security, the water supply and the ability to sustain life. She noted that proper use and management of oceans was the only hope for sustainable development.[14] Kiribati has implemented an adaptation programme aimed at reducing its vulnerability

[10] Ibid.

[11] Ibid.

[12] Oliver Milman, "UN drops plan to help move climate-change affected people", *The Guardian* (6 October 2015). Available from http://www.theguardian.com/environment/2015/oct/07/un-drops-plan-to-create-group-to-relocate-climate-change-affected-people.

[13] Kim Griggs, "Kiribati 'climate refugee' Ioane Teitiota faces deportation after New Zealand court ruling", *ABC News* (22 September 2015). Available from www.abc.net.au/news/2015-09-21/kiribati-climate-refugee-faces-deportation-from-new-zealand/6793144.

[14] See United Nations press release GA/11466 of 9 December 2013. Available from www.un.org/press/en/2013/ga11466.doc.htm.

to climate change by improving water use, protecting against coastal erosion and strengthening community capacity to manage the effects of climate change. Nonetheless, those are reactive measures to the global problem of climate change. If climate change had been effectively managed or seriously considered earlier, such preventive measures would not be so pressing today.

B. Tuvalu: climate change

27. Tuvalu gained independence from the United Kingdom in 1978. Tuvalu comprises three reef islands and six atolls, spread over a total land area of 26 square kilometres, with a population of approximately 10,850 people. Tuvalu is low lying, with the highest point being only 4.6 metres above sea level and the average height being less than 2 metres above sea level. With an estimated sea level rise of 20 to 40 centimetres annually, it is forecast that, in the next 100 years, Tuvalu will be uninhabitable. However, the relocation of Tuvaluans to avoid the impacts associated with a rising sea level is not an option.

28. In 2013, Prime Minister Enele Sopoaga noted that relocating Tuvaluans to avoid the impact of sea level rise should never be an option, because it was self-defeating in itself. For Tuvalu, he felt that there was a real need to mobilize public opinion in the Pacific, as well as in the rest of world, to really urge their lawmakers to have some sort of moral obligation and things like that to do the right thing.[15] On 29 September 2013, Deputy Prime Minister Vete Palakua Sakaio concluded his speech during the general debate of the sixty-eighth session of the General Assembly with an appeal to the world: "Please save Tuvalu against climate change. Save Tuvalu in order to save yourself, the world".[16]

29. Although Tuvalu has a national adaptation programme of action in response to climate change, a global action plan is warranted, whereby leaders seriously consider reducing and agreeing to lowering carbon emissions correlated to increases in the rate of climate change due to global warming.

30. As two of the world's nations that are most vulnerable to the negative impacts of climate change, Kiribati and Tuvalu have been active participants in international diplomatic efforts to address climate change, most importantly within the United Nations Framework Convention on Climate Change. Kiribati and Tuvalu are also members of the Alliance of Small Island States, an intergovernmental organization of small island and low-lying coastal countries that aims to consolidate the voices of small island developing States to address global warming.

31. Although the issue of climate change was high on the agenda of the 46th Pacific Islands Forum Leaders meeting, held in Port Moresby in September 2015, subsequent discussions and the watering down of the issue resulted in the Pacific Islands group failing to reach a strong and unified position at the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Paris in November and December 2015.

[15] See Radio New Zealand International, "Relocation for climate change victims is no answer, says Tuvalu PM", 3 September 2013. Available from www.radionz.co.nz/international/pacific-news/220781/relocation-for-climate-change-victims-is-no-answer,-says-tuvalu-pm.

[16] Statement available from http://gadebate.un.org/sites/default/files/gastatements/68/TV_en.pdf.

C. Papua New Guinea: deep sea mining

32. Papua New Guinea is richly endowed with natural resources, including minerals, renewable resources, forests and marine life. This mineral wealth extends to the seabed. Currently, Papua New Guinea, in conjunction with other States, is engaged in oil and gas extraction projects operated by ExxonMobil. Many more exploration projects have been proposed in Papua New Guinea. While mining is lauded as economically favourable, the indigenous people of Papua New Guinea have not seen any tangible benefits from the decades of mining on land but suffer the direct consequences of environmental disasters, such as the adverse effects of river tailings from the Ramu nickel mine.

33. Human rights violations by transnational companies, licence holders in joint ventures with the Government, further compounds these concerns, particularly when power imbalances arise and no effective remedies are provided. It has been suggested that, in such situations:

> An effective and rights-promoting remedy mechanism should strive to address inherent structural power imbalances. Multinational corporations can often wield enormous power over states, local communities, and individuals affected by their operations. To mitigate the risk, ... strict safeguards must be put in place to address and recalibrate the balance of bargaining power between corporations and rights-holders.[17]

In the present case, indigenous peoples are the rights holders. It is not surprising that local communities in Papua New Guinea and the Pacific, in general, are protesting against deep sea mining and have presented a petition with over 24,000 signatures to the Government to halt experimental seabed mining.[18]

34. Seabed mining is the process of extracting mineral deposits from the ocean floor. Traditionally, seabed mining was conducted using either hydraulic suction pumps or bucket dredging systems.[19] However, despite advances in seabed mining technology, scientific research and knowledge concerning the unique biophysical character of the deep sea environment and the impact of deep sea mining is very limited. As such, there is relatively little information concerning the potential risk of environmental damage associated with proposed seabed mining activities.[20]

35. The extent of disturbances and impact on local seabed ecology is dependent on many factors, including the size of the mining area, the extraction and deposition method used, the type of sediment on the seabed and how exposed the area is to

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[17] See Columbia Law School Human Rights Clinic and Harvard Law School International Human Rights Clinic, *Righting Wrongs? Barrick Gold's Remedy Mechanism for Sexual Violence in Papua New Guinea: Key Concerns and Lessons Learned* (November 2015), p. 3. Available from http://hrp.law.harvard.edu/wp-content/uploads/2015/11/FINALBARRICK.pdf.

[18] Tina Hunter and Madeline Taylor, "Deep sea bed mining in the South Pacific", background paper prepared for the Centre for International Minerals and Energy Law (n.d.). available from www.law.uq.edu.au/documents/cimel/Deep-Sea-Bed-Mining-in-the-South-Pacific.pdf.

[19] See New Zealand, Petroleum and Minerals, *Seabed mining factsheet*, last updated 7 October 2014. Available from www.nzpam.govt.nz/cms/iwi-communities/government-role/doc-library/seabed-mining-factsheet.pdf.

[20] See Robert Makgill and Ana P. Linhares, "Deep seabed mining regulation in the Pacific", *LawTalk*, No. 869 (16 July 2015). Available from www.lawsociety.org.nz/lawtalk/lawtalk-archives/lawtalk-869/deep-seabed-mining-regulation-in-the-pacific.

natural disturbance from currents and waves. Some of the devastating environmental impacts of seabed mining include disturbance to sea habitats, plumes of sediment when tailings are discharged, adverse effects on marine mammals and fish stocks, such as noise and vibrations, wave formation and erosion[19] and the effects on existing interests, such as indigenous peoples' rights.

36. There are also significant unanswered questions regarding the sociocultural and environmental impacts of seabed mining and the underlying science. Industry and governments have abandoned the precautionary approach and any pretence of balancing profits with conservation, human rights, scientific knowledge and sustainable development. Experimental mining is fast-tracked without the benefit of adequate scientific debates or any prior public dialogue and meaningful community participation, the lack of which is compounded when the activity takes place in indigenous territories.

D. New Zealand or *Aotearoa*: living sustainably through *tikanga* Maori

37. Maori, the indigenous peoples of New Zealand, like other indigenous peoples, have a spiritual connection to the oceans and their environs. Maori perceptions of the environment and natural resources, such as the fish in the sea and the climate, are sourced from Maori cosmology, which governs Maori attitudes towards their environment. In their view, animate and inanimate objects are not only interrelated, but considered related. This concept of relatedness (*whanaungatanga*) extends the obligation to non-human relations. In accordance with Maori world view, all things and all people are related and should treat each other with respect. Consequently, Maori believe that if they look after *Papatuanuku* or Earth Mother, she will in turn look after Maori, thereby adhering to the concept of *kaitiaki* or guardianship. The aim for Maori culture or *tikanga* Maori is achieving balance — with the environment and with the community.

38. The concept of *tikanga* Maori are recognized in various pieces of domestic legislation. For instance, when applying for permission to carry out an activity in the environment, the concept of *kaitiakitanga* or the exercise of guardianship has to be satisfied before the activity is approved.[21] In addition, the concept of *rahui* or *tapu*, a tool placing a temporary ban or restriction of access to an area or resource, for example, fish, to allow regeneration, is provided for as a Fisheries Regulation.[22] Furthermore, *taiapure*[23] is an area that has been traditionally managed and is analogous to a marine reserve. *Taiapure* is also provided for in the Fisheries Regulation. It was therefore disappointing that, when the Government of New Zealand announced to the General Assembly in September 2015 that the waters around the Kermadec Islands to the north of New Zealand would become one of the largest ocean sanctuaries in the world, it did not acknowledge the existence of *taiapure*.[24]

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[21] New Zealand, Resource Management Act (1991), sect. 7.

[22] See New Zealand, Fisheries Act (1996), sects. 186A and B; and Fisheries (Kaimoana Customary Fishing) Regulations (1998).

[23] New Zealand, Fisheries Act (1996), sects. 174-185.

[24] John Key, "PM announces Kermadec Ocean sanctuary", press release of 29 September 2015 on the official website of the Government of New Zealand. Available from www.beehive.govt.nz/release/pm-announces-kermadec-ocean-sanctuary.

39. Although the inclusion of Maori concepts is to be commended, it is also open to criticism. The incorporation of Maori concepts into the legislation acknowledges and promotes Maori cultural identity within legislative frameworks;[25] however, there is no nexus between the passage of domestic legislation and *tikanga* Maori. The doctrine of parliamentary sovereignty does not require Parliament to consider *tikanga* Maori before passing legislation. Furthermore, when *tikanga* is taken into account in legislation, often only one aspect has to be satisfied or considered by the decision makers. Considering only one aspect of *tikanga* in isolation, without a context, runs the risk of misinterpretation. Similarly, it is the decision makers who determine whether or not the definition of *tikanga* is satisfied.

40. It has been suggested that greater recognition and incorporation of indigenous cultural principles in the policies and operations of United Nations system organizations, such as the International Seabed Authority and UN-Oceans, would enable achievement not only of sustainability but also fulfilment of the rights articulated in the United Nations Declaration on the Rights of Indigenous Peoples and perhaps be nimble in responding to the environmental challenges posed by climate change. However, as indigenous peoples do not have a strong standing within the United Nations system, there is no direct participation by indigenous peoples in either the International Seabed Authority or UN-Oceans, despite their undeniable intrinsic rights to the oceans, the seabed and their environs. As such, indigenous peoples must rely, instead, on respective States and governments, whose officials are invariably not indigenous.[26]

VI. Conclusion

41. Pacific island States are the most vulnerable to the impacts of climate change. Traditionally, the indigenous peoples of the Pacific have managed their environment, including the oceans, seabed and environs, sustainably so as to benefit all peoples and future generations.

42. The intrinsic relationship that indigenous peoples have with the oceans, seabed and environs are clearly articulated in the United Nations Declaration on the Rights of Indigenous Peoples, including a right of governance. For any activity, such as seabed mining, that takes place within their traditionally owned or otherwise occupied and used lands, their free, prior and informed consent is required. Correspondingly, the onus is on States to recognize and protect the lands and resources of indigenous peoples, provide effective mechanisms for redress and take steps to mitigate any adverse effects on the lives, health, cultures and economies of indigenous peoples. Indigenous peoples have inherent rights to protect and conserve their environments, including the oceans and seabed, and States are required to take steps to ensure these rights.

43. The current actions and inactions and contracts agreed by the International Seabed Authority and UN-Oceans are evidence that recognition and consideration of indigenous peoples' rights and their inclusion in decision-making is not occurring.

[25] Arnu Turvey, "Te ao Māori in a 'sympathetic' legal regime: the use of Māori concepts in legislation", *Victoria University of Wellington Law Review*, vol. 40, No. 2 (October 2009).

[26] For example, the President of the International Seabed Authority, Peter Thompson, was born in Fiji, but is a non-indigenous Fijian.

In the light of the underlying philosophy of sustainability by which indigenous peoples live, it is imperative that their rights be embraced rather than sidelined.[27]

VII. Recommendations

44. Taking into account the actions or inactions taken by United Nations system organizations and agencies that have an impact on indigenous peoples, various mechanisms should be developed to facilitate indigenous peoples' full participation in decision-making on policy development in respect of oceans. Where an activity has a direct impact on indigenous peoples, their free, prior and informed consent must be secured.

45. It is therefore recommended that organizations and agencies such as UN-Oceans, the International Seabed Authority and the United Nations Educational Scientific and Cultural Organization provide, at a minimum, like the World Bank, a place for members of the Permanent Forum as well as independent indigenous experts in the decision-making processes so as to allow indigenous peoples to meaningfully contribute to decisions that affect their lives and environment.[28]

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[27] See United Nations Declaration on the Rights of Indigenous Peoples, art. 31.

[28] Of note is the United Nations Development Programme initiative for indigenous voices to be heard at the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Paris in December 2015. Available from www.undp.org/content/undp/en/home/presscenter/pressreleases/2015/11/11/indigenous-people-take-steps-to-have-a-voice-in-cop21.html.

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Follow-up to the recommendations of the Permanent Forum

Study on how States exploit weak procedural rules in international organizations to devalue the United Nations Declaration on the Rights of Indigenous Peoples and other international human rights law**

Note by the Secretariat

Summary

Pursuant to the decision of the Permanent Forum on Indigenous Issues at its fourteenth session, the Permanent Forum appointed Edward John and Dalee Sambo Dorough, members of the Forum, to conduct a study on how States exploit weak procedural rules in international organizations to devalue the United Nations Declaration on Indigenous Peoples and other international human rights law (see E/2015/43-E/C.19/2015/10, para. 45). The outcome and recommendations of the study are hereby submitted to the Permanent Forum at its fifteenth session.

* E/C.19/2016/1.

** An expanded version of the present study is available as a conference room paper of the Permanent Forum on Indigenous Issues.

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I. Introduction

1. The Permanent Forum on Indigenous Issues continues to examine various effects of State actions in intergovernmental processes since the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (United Nations Declaration) by the General Assembly in its resolution 61/295 on 13 September 2007. Indigenous peoples fought hard to achieve the human rights standards in the United Nations Declaration and remain proactive to ensure maximum compliance in their implementation. Pursuant to its articles 38, 41 and 42, States, the United Nations and its organs, bodies and specialized agencies are required to respect and fully apply the United Nations Declaration and take appropriate measures to achieve, not devalue, its ends.

2. Regressive actions have been observed in such international organizations and processes as the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, the Food and Agriculture Organization of the United Nations (FAO), the World Intellectual Property Organization (WIPO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Bank. Within those forums, there is an alarming trend in the behaviour of States to diminish the standards in the United Nations Declaration, including actions to devalue indigenous peoples' status, rights and participation. Rather, States must uphold their responsibilities and uplift the status, rights and participation of indigenous peoples.

3. The present study examines the matter and concludes that those actions are inconsistent with the purposes and principles of the Charter of the United Nations, as well as the rights and obligations affirmed in the United Nations Declaration and other international human rights law.

4. The preamble of the United Nations Declaration invokes the Charter and reiterates the need for States to act in "good faith in the fulfilment of the obligations assumed by States in accordance with the Charter". The preamble recognizes the "urgent need to respect and promote the inherent rights of indigenous peoples" and that such recognition "will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith". Those are responsibilities that States have assumed with the adoption of, and reiteration of support for, human rights standards and have now been recognized as a key measure of State compliance by treaty bodies, special rapporteurs and other independent experts.

5. The United Nations Declaration is a principled framework for justice, reconciliation and healing. The Office of Legal Affairs, at the request of the then Commission on Human Rights, has indicated that "in United Nations practice, a 'declaration' is a solemn instrument resorted to only in very rare cases relating to matters of major and lasting importance where maximum compliance is expected" (see E/3616/Rev.1, para. 105). The former Special Rapporteur on the rights of indigenous peoples, James Anaya, emphasized that "even though the Declaration itself is not legally binding in the same way that a treaty is, the Declaration reflects legal commitments that are related to the Charter, other treaty commitments and customary international law" (see A/65/264, para. 62). In addition, James Crawford has underlined that "even when resolutions are framed as general principles, they can provide a basis for the progressive development of the law and, if substantially

unanimous, for the speedy consolidation of customary rules. Examples of important 'law-making' resolutions include ... the United Nations Declaration on the Rights of Indigenous Peoples".[1]

6. In the United Nations Declaration, there are diverse provisions that reflect State obligations in both conventional and customary international law. For example, the International Law Association has indicated in its expert commentary that "the relevant areas of indigenous peoples' rights with respect to which the discourse on customary international law arises are self-determination; autonomy or self-government; cultural rights and identity; land rights as well as reparation, redress and remedies".[2]

II. International organizations and States: obligations relating to human rights law

7. In the Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels, it is recognized that "the rule of law applies to all States equally, and to international organizations ... and that respect for and promotion of the rule of law and justice should guide all of their activities and accord predictability and legitimacy to their actions" (see resolution 67/1, para. 2).

8. The obligations of international organizations include, inter alia, those arising from customary international law and peremptory norms. For example, the prohibition against racial discrimination is a peremptory norm or jus cogens and States and international organizations are bound to respect that norm (see A/56/10, p. 208, para. (5)). Where discriminatory provisions in any international agreement were adopted, such texts lacked validity. In regard to indigenous peoples, interpretations would need to be adopted that do not discriminate against them, or else the offending provisions would require amendment. Otherwise, the superior human rights norms would prevail.

9. In an Advisory Opinion in 1980, the International Court of Justice emphasized: "International organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties."[3] Whether through joint or separate action, States parties cannot evade their international human rights obligations by acting through international organizations. According to Article 103 of the Charter, in the event of conflict between the obligations of States under the Charter and those under any other international agreement, the Charter obligations would prevail.

10. International organizations cannot use consensus to devalue indigenous peoples' human rights, including the United Nations Declaration and other international human rights instruments. As underlined in the August 2011 report of

[1] James Crawford, *Brownlie's Principles of Public International Law*, 8th ed. (Oxford, Oxford University Press, 2012), p. 42.

[2] International Law Association, "Rights of Indigenous Peoples", Interim Report, The Hague Conference, 2010.

[3] *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, p. 73, para. 37.

the Expert Mechanism on the Rights of Indigenous peoples: "Consensus is not a legitimate approach if its intention or effect is to undermine the human rights of indigenous peoples. Where beneficial or necessary, alternative negotiation frameworks should be considered, consistent with States' obligations in the Charter of the United Nations and other international human rights law" (see A/HRC/18/42, annex).

11. Participation in international forums is challenging for indigenous peoples, since the rules are heavily weighted in favour of States. Indigenous peoples remain highly vulnerable to State discretion as they are not part of any consensus.[4] With virtually no checks and balances within outdated procedural rules, States may propose and agree to discriminatory or substandard provisions.

12. In international organizations, States have a tendency to excessively reinforce their own sovereignty in addressing both substantive and procedural issues. Serious shortcomings in the procedural rules of such organizations continue to severely affect indigenous peoples' participation and their substantive rights. Indigenous self-determination is especially undermined.

13. The procedures within international organizations require urgent redress. Indigenous rights and concerns relating to such crucial global issues as biodiversity,[5] food security,[6] climate change,[7] development,[8] free trade[9] and intellectual property,[10] are being addressed in a manner detrimental to indigenous peoples.[11]

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[4] "Consensus", as understood within the United Nations, refers to acceptance of a proposal where no objection is formally raised.

[5] See, e.g., Grand Council of the Crees (Eeyou Istchee) and others, "Nagoya protocol on access and benefit sharing: substantive and procedural injustices relating to indigenous peoples' human rights", Expert Mechanism on the Rights of Indigenous Peoples, fourth session, Geneva, July 2011.

[6] Grand Council of the Crees (Eeyou Istchee) and others, "FAO Voluntary Guidelines on Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security: discrimination and subjugation of indigenous peoples and rights". Available from http://quakerservice.ca/wp-content/uploads/2012/05/FAO-Natl-Food-Security-Guidelines-Governance-of-Indigenous-Tenure-Rights-GCCEI-Joint-Submission-Apr-12.pdf.

[7] See, e.g., International Indigenous Peoples' Forum on Climate Change, "Indigenous groups announce grave concern on possible Cancun outcome", press release, 10 December 2010.

[8] "Statement of Special Rapporteur to UN General Assembly, 2011", New York, 17 October 2011. Available from http://unsr.jamesanaya.org/statements/statement-of-special-rapporteur-to-un-general-assembly-2011.

[9] See A/HRC/10/5/Add.2, para. 33: "The human rights obligations of [World Trade Organization] WTO members and the commitments they make through the conclusion of agreements under the WTO framework remain uncoordinated ... trade negotiators either are not aware of the human rights obligations of the Governments they represent, *or they do not identify the implications for their position in trade negotiations*." (emphasis added)

[10] World Intellectual Property Organization (WIPO) (Traditional Knowledge Division), "Note on existing mechanisms for participation of observers in the work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore: comments submitted by the Grand Council of the Crees (Eeyou Istchee)", 30 November 2011.

[11] See also Forest Peoples Programme, "FPP E-Newsletter", April 2012: "The continuous, sometimes subtle, violence of conservation and development against indigenous peoples continues, unchecked even at the highest levels by the most worthy-sounding agencies of the United Nations." Available from http://www.forestpeoples.org/topics/environmental-governance/publication/2012/fpp-e-newsletter-april-2012-pdf-version.

14. Strong procedural rules are necessary to prevent States from using consensus on substandard proposals that are inconsistent with the principles of justice, democracy, non-discrimination, respect for human rights and rule of law. Effective compliance mechanisms would be required. Even where a consensus "rule" exists, the Secretary-General has described consensus as a "privilege ... [and] that this privilege comes with responsibility".[12] Concerns relating to consensus have also surfaced at the General Assembly:

> But unfortunately, consensus ... has become an end in itself ... This has not proved an effective way of reconciling the interests of Member States. Rather, it prompts the Assembly to retreat into generalities, abandoning any serious effort to take action. Such real debates as there are tend to focus on process rather than substance and many so-called decisions simply reflect the lowest common denominator of widely different opinions (see A/59/2005, para. 159).

III. Actions within international organizations to devalue indigenous human rights

United Nations Framework Convention on Climate Change

15. The United Nations Framework Convention on Climate Change employs strict rules of procedure to ensure a "party-driven process". Such a process severely limits opportunities for interaction between parties and indigenous peoples. Indigenous peoples face marginalization in the negotiations of multilateral environmental instruments. Those procedural injustices directly translate into substantive injustices. Representatives of indigenous peoples typically attend multilateral environmental negotiations as observers. Generally, observers do not have the right to speak during formal negotiations and may not even have the right to be in the room where formal negotiations are being conducted.

16. In December 2015, at the Paris climate change negotiations, the methods used by the Conference of the Parties to the United Nations Framework Convention on Climate Change permitted extremely limited opportunities for indigenous peoples to engage in text-based negotiations. The negotiations were conceptual, rather than text-based. After one or more rounds of conceptual negotiations, facilitators worked to produce compromise texts. At the Convention, the final stages were party to party and did not necessarily even occur in negotiating rooms.

17. On an issue as complex as the rights of indigenous peoples, a "conceptual" negotiation proved to generate confusion. Some parties expressed concern regarding the use of the term "peoples", and with the concept of collective human rights. That led several parties to suggest that human rights language should not include references to the rights of indigenous peoples. Parties then attempted to negotiate human rights text, when, by their own admission, many of the negotiators lacked any meaningful knowledge on international human rights law.

[12] Department of Public Information, "Secretary-General calls on delegates to end stagnation in disarmament conference, seize 'Collective opportunity to build a safer world', at Headquarters meeting", New York, 24 September 2010. Available from http://www.un.org/press/en/2010/sgsm13138.doc.htm.

18. The Office of the United Nations High Commissioner for Human Rights (OHCHR) concluded: "It is now beyond dispute that climate change caused by human activity has negative impacts on the full enjoyment of human rights. Climate change has profound impacts on a wide variety of human rights, including the rights to life, self-determination, development, food, health, water and sanitation and housing." OHCHR further added, "climate change is a human rights problem and the human rights framework must be part of the solution".[13] However, the Paris Agreement, adopted by the Conference of the Parties to the United Nations Framework Convention on Climate Change at its twenty-first session on 12 December 2015, provides only one reference to "human rights" in the whole text. Part of the preamble provides:

> *Acknowledging* that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity[.]

19. It is inaccurate to suggest: "Parties *should* ... respect, promote and *consider* their respective obligations on human rights." State obligations on human rights are not discretionary. In international law, States have an obligation to respect, protect, promote and fulfil human rights. In June 2007, the Human Rights Council affirmed by consensus that the "promotion and protection of all human rights" permanently includes the "rights of peoples, and specific groups and individuals" (see A/62/53, chap. IV, sect. A). For more than 35 years, there has been the practice of addressing indigenous peoples' collective rights within the international human rights system. To deny indigenous peoples' collective human rights would constitute forced assimilation and racial discrimination.

20. In his August 2012 report to the General Assembly, former Special Rapporteur James Anaya indicated: "Being among those most affected by climate change, indigenous peoples have for years been demanding greater protection of their human rights in the context of international discussions on climate change and for their effective participation in those discussions, in accordance with the principles of the Declaration on the Rights of Indigenous Peoples." Anaya further added, "The outcomes of these processes should reinforce the rights of indigenous peoples as affirmed in the Declaration. In no instance should a new international treaty or other instrument, or the outcome document of a conference, fall below or undermine the standards set forth in the Declaration or established in other international sources" (see A/67/301, paras. 62 and 91).

[13] See Office of the United Nations High Commissioner for Human Rights (OHCHR), "Understanding human rights and climate change: submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change", 26 November 2015, p. 6.

Convention on Biological Diversity

Undermining indigenous peoples' status

21. In November 2015, the Ad Hoc Open-ended Inter-sessional Working Group on Article 8 (j) and related provisions considered the "Draft voluntary guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure the [free,] prior informed consent [or approval and involvement] of indigenous peoples and local communities for accessing their knowledge, innovations and practices, the fair and equitable sharing of benefits arising from the use and application of such knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity, and for reporting and preventing unlawful appropriation of traditional knowledge".[14]

22. The Working Group then adopted recommendation 9/1 requesting the Conference of the Parties to adopt the voluntary guidelines at its thirteenth meeting in Cancun, Mexico, from 4 to 17 December 2016. Paragraph 3 of the voluntary guidelines provides: "Nothing in these guidelines should be construed as changing the rights or obligations of Parties under the Convention or under the Nagoya Protocol [on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity]." That latter statement could imply that the rights or obligations of parties, as they relate to indigenous peoples, are frozen. That is, in relation to indigenous peoples, the guidelines could not be interpreted in the future in a manner consistent with the progressive development of international law.

23. In October 2014, the Conference of the Parties adopted decision XII/12 F,[15] agreeing to use the terminology "indigenous peoples and local communities", instead of "indigenous and local communities", in future decisions and secondary documents under the Convention on Biological Diversity. While the decision refers solely to the Convention, the decisions and obligations of the parties and amendment procedures in the treaty also relate to all its Protocols. At the same time, the decision added a number of caveats:

> "(a) That the use of the terminology 'indigenous peoples and local communities' in any future decisions and secondary documents shall not affect in any way the legal meaning of Article 8(j) and related provisions of the Convention;
>
> "(b) That the use of the terminology 'indigenous peoples and local communities' may not be interpreted as implying for any Party a change in rights or obligations under the Convention;
>
> "(c) That the use of the terminology 'indigenous peoples and local communities' in future decisions and secondary documents shall not constitute a context for the purpose of interpretation of the Convention on Biological Diversity as provided for in article 31, paragraph 2, of the Vienna Convention on the Law of Treaties or a subsequent agreement or subsequent practice among Parties to the Convention on Biological Diversity as provided for in article 31, paragraph 3 (a) and (b) or special meaning as provided for in article 31, paragraph 4, of the Vienna Convention on the Law of Treaties."

[14] Convention on Biological Diversity, UNEP/CBD/WG8J/REC/9/1.
[15] Ibid., UNEP/CBD/COP/DEC/XII/12.

24. The effect of that was to freeze the interpretation of the term "indigenous peoples and local communities" in future decisions and secondary documents so as to have no legal effect on the Convention on Biological Diversity or on the Nagoya Protocol either now or in the future. Article 22, paragraph 1, of the Convention on Biological Diversity makes it clear that the Convention does not affect States parties' obligations deriving from "existing international agreements". Such agreements clearly include the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which include an identical article 1 on the right of all peoples to self-determination.

25. United Nations treaty bodies have confirmed repeatedly that the right of self-determination, as provided in the international human rights Covenants, applies to the world's "indigenous peoples".[16] States that seek to restrict or deny indigenous peoples' status as "peoples" in order to impair or deny their rights are violating the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights.[17]

26. It would be manifestly unreasonable to conclude that, under the Convention on Biological Diversity and the Nagoya Protocol, use of the term "indigenous peoples" would have no legal significance. It is well established that, in a wide range of international instruments that use the same term and often address similar subject matters, the status of indigenous peoples had and continues to have a different meaning with legal effects.

27. Examples that use the term "indigenous peoples" without qualification include the Convention for the Safeguarding of the Intangible Cultural Heritage, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, the United Nations Declaration on the Rights of Indigenous Peoples, the outcome document of the United Nations Conference on Sustainable Development, entitled "The future we want", and the 2005 World Summit Outcome. The same term is also used in the outcome document of the World Conference on Indigenous Peoples and in the Paris Agreement.

Unjust treatment of the United Nations Declaration on the Rights of Indigenous Peoples

28. In its preamble, the Nagoya Protocol makes specific reference to the United Nations Declaration on the Rights of Indigenous Peoples. The International Court of Justice has affirmed the value of preambles in interpreting conventions,[18] as does article 31, paragraph 2 of the Vienna Convention on the Law of Treaties. In regard

[16] See, e.g., CCPR/C/CAN/CO/5, paras. 8 and 9; CCPR/C/PAN/CO/3, para. 21; CCPR/C/79/Add.112, para. 17; E/C.12/MAR/CO/3, para. 35; and E/C.12/1/Add.94, para. 11.

[17] In regard to the Covenant, see general comment No. 18, para. 7, of the Human Rights Committee: "The term 'discrimination' as used in the Covenant should be understood to imply *any distinction, exclusion, restriction or preference which is based on any ground such as race*, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and *which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons*, on an equal footing, of all rights and freedoms." (emphasis added)

[18] See, e.g., *Colombian-Peruvian asylum case, Judgment of November 20th, 1950: I.C.J. Reports 1950*, p. 266, and *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 6, para. 64.

to the matters in decision XII/12 F, the Executive Secretary of the Convention on Biological Diversity sought informal advice from the Office of Legal Affairs. Yet no mention was made by the Executive Secretary of the Nagoya Protocol and the inclusion in its preamble of the United Nations Declaration.

29. As discussed above, decision XII/12 F could not validly conclude that the term "indigenous peoples", when used in "future decisions and secondary documents", has no legal effect on the Convention on Biological Diversity and the Nagoya Protocol. Decisions XII/12 A and XII/12 B[15] confirm the relevance of the United Nations Declaration in implementing articles 8 (j) and 10 (c), respectively, of the Convention on Biological Diversity.

30. When decisions XII/12 A and XII/12 B highlighted the significance of the United Nations Declaration, Canada refused to join the consensus unless the footnotes referencing the Declaration also "note[d] reservations put forward by Parties". It is inappropriate for the parties at the Conference of the Parties to have added "reservations" in any Conference decision. First, a "reservation" is solely made in regard to treaties, according to the Vienna Convention on the Law of Treaties,[19] and the Declaration only included explanations of vote. Second, according to article 37 of the Convention on Biological Diversity and article 34 of the Nagoya Protocol, no reservations may be made to the Convention or Protocol, except in accordance with articles 29 and 30 of the Convention.

31. Since 2007, the four States that voted against the United Nations Declaration have all formally reversed their positions. Other States have since endorsed the Declaration.[20] It would be misleading for the Convention on Biological Diversity to raise explanations of vote made in 2007 by States who have since changed their position. In any event, explanations of vote do not alter the status of the United Nations Declaration as a consensus instrument.

World Heritage Convention

32. The Permanent Forum on Indigenous Issues has received numerous communications from indigenous organizations regarding violations of indigenous peoples' rights in processes of the Convention concerning the Protection of the World Cultural and Natural Heritage. Existing participation procedures are not in accordance with international standards related to the right of indigenous peoples to participate in decision-making in matters that would affect their rights. There is no effective way for indigenous peoples to bring concerns regarding World Heritage sites directly to the attention of the World Heritage Committee.[21]

33. The African Commission on Human and Peoples' Rights in 2011 adopted a specific resolution in which it notes with concern that "there are numerous World Heritage sites in Africa that have been inscribed without the free, prior and

[19] The Rules of Procedure of the General Assembly (A/520/Rev.17) include no express provisions relating to reservations.

[20] Colombia, Samoa and Ukraine had abstained in the 2007 vote in the General Assembly and subsequently endorsed the United Nations Declaration on the Rights of Indigenous Peoples.

[21] International Work Group for Indigenous Affairs and others, "Joint submission on the lack of implementation of the UN Declaration on the Rights of Indigenous Peoples in the context of UNESCO's World Heritage Convention", Permanent Forum on Indigenous Issues, Eleventh Session, 7-18 May 2012. Available from http://www.forestpeoples.org/sites/fpp/files/publication/2012/05/joint-submission-unpfii.pdf.

informed consent of the indigenous peoples in whose territories they are located and whose management frameworks are not consistent with the principles of the United Nations Declaration on the Rights of Indigenous Peoples".[22]

34. The African Commission resolution highlighted the 2011 inscription by the World Heritage Committee of Lake Bogoria National Reserve (Kenya) on the World Heritage List without involving the Endorois people in the decision-making process and without obtaining their free, prior and informed consent, emphasizing that this constituted a violation of the Endorois' right to development under article 22 of the African Charter on Human and Peoples' Rights and contravened its 2009 decision in the Endorois case.[23]

35. In paragraph 2 of its resolution, the African Commission urged the World Heritage Committee and UNESCO, "to review and revise current procedures and [the] Operational Guidelines ... in order to ensure that the implementation of the World Heritage Convention is consistent with the United Nations Declaration on the Rights of Indigenous Peoples and that indigenous peoples' rights, and human rights generally, are respected, protected and fulfilled in World Heritage areas" and in paragraph 3 it urged the Committee and UNESCO to "consider establishing an appropriate mechanism through which indigenous peoples can provide advice to the World Heritage Committee and effectively participate in its decision-making processes". The Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of indigenous peoples have all made similar recommendations.[24]

36. As a result, the World Heritage Committee in 2015 added a provision related to the participation of indigenous peoples in the nomination of World Heritage sites to its Operational Guidelines. The Guidelines now encourage States "to demonstrate, as appropriate, that the free, prior and informed consent of indigenous peoples has been obtained through, inter alia, making the nominations publicly available in appropriate languages and public consultations and hearings". However, obtaining indigenous consent is still not a mandatory requirement, and the extent to which indigenous peoples are involved in nomination processes remains at the discretion of the relevant States.

37. The same concern applies to the management of already inscribed sites. The 2015 discussions within the World Heritage Committee revealed strong resistance by many States to adopting real procedural safeguards for the rights of indigenous peoples. Several States even contested the concept of "indigenous peoples", including some States that endorsed the United Nations Declaration, such as France

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[22] *Resolution on the protection of indigenous peoples' rights in the context of the World Heritage Convention and the designation of Lake Bogoria as a World Heritage site* (No. 197), 5 November 2011, preamble.

[23] Decision on Communication 276/2003: Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council)/Kenya. Available from http://www.achpr.org/files/sessions/46th/comunications/276.03/achpr46_276_03_eng.pdf. The decision affirms the rights of ownership of the Endorois to their ancestral lands around Lake Bogoria and calls on Kenya, inter alia, to "recognise rights of ownership to the Endorois and restitute Endorois ancestral land".

[24] See, e.g., E/2011/43, paras. 40-42; E/2013/43, para. 23; A/HRC/21/52, sect. II.D, proposal 9; A/HRC/30/53, annex; A/67/301, paras. 33-42; and A/HRC/25/74, p. 127. See also International Law Association, "Rights of Indigenous Peoples", Final Report, Sofia Conference, 2012, pp. 17-19.

and Senegal. The Committee also explicitly rejected a proposal to make World Heritage nomination documents publically accessible once they are received by UNESCO. Unless a given State publishes the nomination documents voluntarily, they are only accessible to the members of the Committee, not to affected indigenous peoples or the public.[25]

38. The World Heritage Committee has indicated that it will re-examine issues related to indigenous participation following the adoption of the UNESCO Policy on Indigenous Peoples.[26] Once adopted, the policy is supposed to provide "guidance to staff and committees in order to effectively implement the [United Nations Declaration] in all components of UNESCO's work".[27] However, very little progress on the development and adoption of the policy has been made. The Expert Mechanism on the Rights of Indigenous Peoples has therefore called on UNESCO to strengthen its efforts to finalize the policy, in cooperation with indigenous peoples and the three United Nations mechanisms with specific mandates regarding the rights of indigenous peoples (see A/HRC/30/53, annex, para. 31).

World Intellectual Property Organization

39. Member States have undertaken action within WIPO to diminish indigenous peoples' human rights. The drafting and dialogue related to the various texts being discussed within the Intergovernmental Committee of WIPO concerning indigenous rights to intellectual property, genetic resources, traditional knowledge and traditional cultural expressions have been affected. One problematic procedural measure is that indigenous organizations must seek member State approval in order to be accredited to participate in the Intergovernmental Committee. Such a measure contradicts article 18 of the United Nations Declaration.[28] Furthermore, there have been repeated complaints that the established and agreed upon procedural rules of negotiation of an instrument within the WIPO Intergovernmental Committee have not been adhered to by member States.

40. WIPO member States are arguing that they should be "beneficiaries of protection" rather than establishing indigenous-controlled institutions when the proprietors of knowledge are not known. Furthermore, States have pursued broad recognition of the notion of indigenous knowledge being in the "public domain" or "common heritage", thereby denying the status of such information as indigenous knowledge. In addition, States have attempted to remove references to customary law in the context of recognition of harm and benefits, despite the fact that both the

[25] Endorois Welfare Council, Saami Council and International Work Group for Indigenous Affairs, "Joint statement on the continued lack of protection of the rights of indigenous peoples with respect to their cultural heritage in the context of UNESCO's World Heritage Convention", Available from http://www.iwgia.org/iwgia_files_news_files/1234_EMRIP_2015_Statement_of_IGIA_Endorois_elfare_Council_and_Saami_Council.pdf. For the French position, see also United Nations Educational, Scientific and Cultural Organization (UNESCO), "States Parties' comments to the Draft Policy for the integration of a Sustainable Development Perspective into the Processes of the World Heritage Convention". Available from http://whc.unesco.org/en/sessions/20ga/documents/.

[26] World Heritage Committee, decision 39 COM 11, para. 10.

[27] UNESCO, "Report on the achievement of the goal and objectives of the Second International Decade of the World's Indigenous Peoples (2005-2014): Questionnaire Response", February 2014, p. 3. Available from http://www.un.org/esa/socdev/unpfii/documents/2014/unesco.pdf.

[28] WIPO, leaflet No. 12. Available from http://www.ohchr.org/Documents/Publications/GuidelPleaflet12en.pdf.

United Nations Declaration and the Indigenous and Tribal Peoples Convention, 1989, provide for culture and cultural rights to be protected by existing or sui generis indigenous peoples' laws and practices.

41. Unfortunately, States and the corresponding interests of pharmaceutical companies, multinational corporations and others have been primarily focused upon their own interests throughout those discussions. Though some efforts have been made by WIPO to advance indigenous participation, such participation has been limited owing to lack of resources. The Permanent Forum has called upon States, foundations and other organizations to contribute to the WIPO Voluntary Fund for Accredited Indigenous and Local Communities.

42. To date, WIPO has not focused upon establishing a regime that comprehensively responds to the unique status, conditions and rights of indigenous peoples. Rather, WIPO has attempted to fit indigenous peoples into the copyright, patent, trademark, trade and industrial design rules, policies and laws. Such issues should be addressed in full collaboration with indigenous peoples and be informed by the minimum standards of the United Nations Declaration, in order to develop an innovative regime that safeguards their cultural heritage, rights and identity.

43. Indigenous peoples should not be excluded from the existing WIPO regime of intellectual property. A framework that first upholds the minimum human rights standards affirmed by the United Nations Declaration should be complemented by additional measures to safeguard indigenous human rights. Consistent with their right to self-determination, indigenous peoples may choose to engage and use the existing intellectual property rights path. However, distinct standards and rights as well as a regime must first be established to fully address and safeguard the unique status and rights of indigenous peoples.

Food and Agriculture Organization of the United Nations

44. FAO engages in progressive positions that are supportive of indigenous peoples' human rights and the United Nations Declaration. The FAO Policy on Indigenous and Tribal Peoples of 2010 highlights:

> FAO activities that affect indigenous peoples will be guided by the human rights-based approach to development, premised on the notion that everyone should live in dignity and attain the highest standards of humanity guaranteed by international human rights law. It will be guided in particular by the core principles expressed in this policy document and by the United Nations Declaration on the Rights of Indigenous Peoples.

However, in negotiating international agreements under procedural rules of FAO, States are able to take positions that fall significantly lower than existing international human rights standards, including those affirmed in the FAO Policy on Indigenous and Tribal Peoples.

45. The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security of 2012 fail to characterize land and resource tenure rights as human rights (see paras. 3.2 and 4.3), and ambiguously imply that the legal status of the United Nations Declaration may be nothing more than a "voluntary commitment" (see paras. 9.3 and 12.7). The Guidelines also unjustly alter the legal concept of "free, prior and informed

consent" by adding "with due regard for particular positions and understandings of individual States" (see para. 9.9).

46. A central purpose of the Voluntary Guidelines is to improve "responsible governance" in the national context. However, that is unlikely to be achieved in a fair and uplifting manner. There is no overall global framework consistent with human rights that all actors are expected to respect. Although related to governance and food security, indigenous peoples' right of self-determination is not explicitly included in the Guidelines. Instead it is provided that: "These Guidelines should be interpreted and applied in accordance with national legal systems and their institutions" (see para. 2.5). In the crucial context of lands and resources and food security, the Guidelines fail to address respect and protection by States of the right of indigenous peoples to self-government, through their own decision-making institutions.

47. The Voluntary Guidelines weaken States' "international commitments" by introducing the notion of "voluntary commitments". Such a characterization did not exist in the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security of 2004. In commenting on an earlier draft of the Guidelines, the Special Rapporteur on the right to food cautioned that overemphasis on their "voluntary" nature could lead States to "underestimate their obligations" and lead to the undermining of existing standards.[29]

48. Former Special Rapporteur James Anaya underlined in 2013: "Both substantive and procedural complaints have been made concerning the Guidelines. In particular, concern has been raised by a number of indigenous peoples and organizations that certain provisions fall below already agreed upon standards with respect to rights to lands and resources, which are core rights for indigenous peoples." Anaya added:

> The Guidelines could be improved upon by taking more fully into account the special standards and considerations that apply to indigenous peoples. The Special Rapporteur has consistently argued against restrictive interpretations of texts that bear upon human rights, preferring to adopt broad and progressive understandings of written instruments when possible and also to encourage States and other actors always to implement guidelines and policies concerning indigenous peoples in accordance with the spirit and terms of the Declaration [on the Rights of Indigenous Peoples] (see A/67/301, paras. 45 and 47).

World Bank

49. Expressing concern regarding a sustained divergence between World Bank practice and the rights of indigenous peoples, in 2013 the Permanent Forum on Indigenous Issues recommended "that the World Bank brings its policy on indigenous peoples (OP 4.10) into full compliance with the United Nations Declaration on the Rights of Indigenous Peoples. The Forum attaches particular

[29] OHCHR, "Comments on the Zero Draft of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests", Olivier De Schutter, United Nations Special Rapporteur on the right to food, 16 May 2011. Available from http://www.srfood.org/images/stories/pdf/otherdocuments/20110516_comments-zero-draft-guidelines_en.pdf.

importance to the need for the Bank to adopt the standard of free, prior and informed consent and, in general, to institutionalize and operationalize an approach based on human rights" (see E/2013/43, para. 56; see also E/C.19/2013/15).

50. As States reaffirmed their commitments to indigenous rights at the World Conference of Indigenous Peoples, the World Bank sought consensus on a proposal to allow Governments to opt out of implementing the indigenous peoples' safeguard policy completely, in favour of an "alternative approach" to the safeguard. The indigenous peoples' safeguard was the only policy in which the World Bank advanced an opt-out clause.

51. The World Bank has made few specific efforts to engage with indigenous peoples on its safeguards policies. That contradicts article 18 of the United Nations Declaration and suggests a bad faith process by both the World Bank and its member States. It is crucial for the World Bank and other development banks to be responsive to Permanent Forum recommendations calling for them to adopt policies that fully conform to the United Nations Declaration and other international human rights standards.

52. In regard to its safeguards policies, the World Bank has been severely criticized by indigenous peoples and many others. For example, in a December 2014 letter to the President of the World Bank from 28 Special Rapporteurs and Independent Experts, it is indicated: "As the Bank seeks to revise and adapt its Safeguards approach to the challenges of the twenty-first century ... it is imperative that the standards should be premised on a recognition of the central importance of respecting and promoting human rights ... Instead, by contemporary standards, the document seems to go out of its way to avoid any meaningful references to human rights and international human rights law, except for passing references".[30]

IV. Conclusions and recommendations

53. In order to safeguard the rights of indigenous peoples and the international human rights system, it is imperative that procedural rules within international organizations be reformed. That should be undertaken with the full and effective participation of indigenous peoples, in a spirit of partnership and mutual respect consistent with the United Nations Declaration on the Rights of Indigenous Peoples.

54. Some States and international organizations have positive policies relating to indigenous peoples and the United Nations Declaration. Yet when States negotiate new international instruments even within such supportive international organizations, indigenous peoples' status and rights are often adversely affected, and their participation is marginalized.

55. Outdated rules of procedure are inviting unlimited abuses against indigenous peoples. With virtually no checks and balances within such rules, States appear free to propose and agree to discriminatory or other substandard provisions. Such procedural injustices generate substantive injustices.

[30] Special Rapporteur on extreme poverty and human rights and others, Letter to World Bank President Jim Yong Kim, 12 December 2014. Available from http://www.ohchr.org/Documents/Issues/EPoverty/WorldBank.pdf.

56. The practice is generally consensus-driven so that the lowest common denominator prevails. Regardless of the prejudicial consequences for indigenous peoples, other participating States have not formally objected.

57. The international human rights system and rule of law are weakened as a result. It is unconscionable that both the States and international organizations concerned show an ongoing lack of determination and political will to prevent or redress such injustices, as well as safeguard the international human rights system.

58. All such violations of indigenous peoples' rights are incompatible with the obligations of States under the Charter of the United Nations and international human rights law. It is crucial that international organizations use the United Nations Declaration as a standard and framework when indigenous peoples' status and rights may be affected. It is essential that international organizations and their member States fully inform themselves of the distinct nature of indigenous peoples' status and human rights.

59. Specialized agencies and other intergovernmental organizations should reform their procedural rules on an urgent basis, in consultation and cooperation with indigenous peoples. In no case should State proposals on any matter be permitted that would violate the Charter. The rules for such organizations should be fully consistent with articles 41 and 42 of the United Nations Declaration. Special rules should be adopted so that indigenous governments are permitted to participate as governments and not as non-governmental organizations.

60. Within their respective mandates, United Nations treaty bodies and regional human rights bodies have an important role to play in establishing relevant standards and jurisprudence. Similarly, the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and Special Rapporteurs and other Independent Experts should play a role. The universal periodic review of the Human Rights Council should also be used to encourage States to comply with their international human rights obligations.

61. The Permanent Forum urges special agencies of the United Nations and other international organizations to include, in their yearly information to the Forum, an update on measures taken to reform their procedural rules consistent with international human rights law.

62. States should refrain from using domestic law or national legislation as a way of circumventing international human rights law and their corresponding obligations. States should not require international human rights standards to be "subject to" or "in accordance with" national legislation. Rather, States, in conjunction with indigenous peoples, should develop legislation at the national level to ensure that domestic laws and policies concerning the rights of indigenous peoples are consistent with the United Nations Declaration.

63. In relation to environment, development, human rights, security and other issues, international cooperation must be wholly inclusive of indigenous peoples and in good faith. As underlined by the International Court of Justice: "One of the basic principles governing the creation and the performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation, in particular in an age when this co-operation in many fields is becoming essential."[31]

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[31] *Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports 1974*, p. 253.

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Follow-up to the recommendations of the Permanent Forum

System-wide action plan for ensuring a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples

Summary

In the outcome document of the 2014 high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, the Assembly requested the Secretary-General to develop, within existing resources, a system-wide action plan to ensure a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples. The system-wide action plan was developed following consultations with indigenous peoples, Member States and the Inter-Agency Support Group on Indigenous Peoples' Issues.

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I. Introduction

A. Background

1. The outcome document of the 2014 World Conference on Indigenous Peoples contains a series of commitments calling for multifaceted action by a range of actors, first and foremost Member States, but also the United Nations system. Among these is a request that the Secretary-General develop a system-wide action plan to ensure a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples (resolution 69/2, para. 31). The outcome document also requests the designation of an existing senior official of the United Nations system to be responsible for coordinating the action plan, raising awareness of the rights of indigenous peoples at the highest possible level and increasing the coherence of the activities of the United Nations system in this regard. The Under-Secretary-General for Economic and Social Affairs was designated to perform this responsibility and has coordinated the development of the action plan.[1]

2. For the preparation of the action plan, under the guidance of the Under-Secretary-General, the Department of Economic and Social Affairs organized consultations with Member States, indigenous peoples, representatives of United Nations agencies, funds and programmes, the three United Nations mechanisms with specific mandates concerning indigenous peoples and others.

3. Throughout these consultations, the need for further awareness-raising on the Declaration and for capacity-building to implement its provisions was highlighted as a central concern. This concern has been raised in relation to the United Nations system, as well as among Member States, indigenous peoples themselves and the broader societies in which they live. The consultations also identified the need for concerted action to implement the Declaration, especially at the country level. The full and effective participation of indigenous people in processes that affect them is another matter that has been a priority for indigenous peoples and is a principle that is recognized and supported by Member States. The action plan seeks to address these matters.

4. Based on the feedback received, the plan focuses on the following action areas: (a) raise awareness on the United Nations Declaration on the Rights of Indigenous Peoples and indigenous issues; (b) support the implementation of the Declaration, particularly at the country level; (c) support the attainment of indigenous peoples' rights in the implementation and review of the 2030 Agenda for Sustainable Development; (d) conduct an exercise to map existing policies, standards, guidelines, activities, resources and capacities within the United Nations and the multilateral system to identify opportunities and gaps; (e) develop the capacities of States, indigenous peoples, civil society and United Nations personnel at all levels; and (f) support the participation of indigenous peoples in processes that affect them. The primary aim of this action plan is to increase United Nations system coherence in addressing the rights and well-being of indigenous peoples in its work, including in support of Member States, with the ultimate goal of implementing, with the

[1] The present action plan was developed by the Inter-Agency Support Group on Indigenous Peoples' Issues over the course of 10 months in 2015 and was finalized at the annual meeting of the Support Group on 26 and 27 October 2015. The Secretary-General introduced the action plan to the United Nations System Chief Executives Board for Coordination at its meeting on 18 December 2015.

effective participation of indigenous peoples, the Declaration on the Rights of Indigenous Peoples at all levels.

5. The present action plan aims to promote improved support to Member States and to indigenous peoples themselves. Particular attention is paid to the United Nations system using its convening capacity to facilitate dialogue and cooperation between State actors and indigenous peoples, promoting indigenous peoples' participation in global, regional and national processes that affect them and supporting Member States to take into account indigenous peoples' rights and views in line with international standards.

B. Guiding framework

6. In accordance with the mandate from the General Assembly and as reflected in the action areas set out below, the action plan is focused on promoting the achievement of the ends of the Declaration on the Rights of Indigenous Peoples.

7. The Declaration defines the minimum standards necessary for the survival, dignity and well-being of indigenous peoples. It is a definitive expression of the rights of indigenous peoples as recognized by the General Assembly, identifying their rights in the context of a comprehensive range of thematic areas, including health, education, culture, land rights, traditional livelihoods, traditional knowledge and collective rights. The Declaration enshrines the rights to self-determination and development with culture and identity.

8. The action plan falls clearly within the letter and spirit of articles 41 and 42 of the Declaration, which call for the United Nations system to contribute to the full realization of the Declaration and to promote respect for and full implementation of its provisions in addressing all the articles of the Declaration within each entity's respective mandate.

9. The 2030 Agenda for Sustainable Development sets the global development agenda and affects the way the international community will work with indigenous peoples over the coming years. The 2030 Agenda has addressing inequalities as its centrepiece. The overall aim of the new Agenda is to leave no one behind by reaching the furthest behind first and by ensuring that Sustainable Development Goal targets are met for all nations and peoples and for all segments of society.

10. It reaffirms the responsibility of all States, to respect, protect and promote human rights, without distinction of any kind as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth, disability or other status. The open-ended nature of the list constitutes an implicit recognition that all human beings are born free and equal and it thereby ensures consistency with existing human rights standards on non-discrimination.

11. The action plan ultimately aims to contribute to the realization of indigenous peoples' rights at the country level through reinforced support by the United Nations system to Member States. The United Nations Indigenous Peoples' Partnership can be one of the key means, among others, to promote coherence and joint programming at the country level and it is therefore important to strengthen the Partnership and its scope.

12. Building upon already existing initiatives within the United Nations system, the action plan promotes awareness, understanding and better and more effective use of guidelines and resource material developed by the United Nations system on indigenous peoples' issues, including the United Nations Development Group Guidelines on Indigenous Peoples' Issues and the related plan of action, produced as the resource kit on indigenous peoples' issues. These resources were designed to assist the system in mainstreaming and integrating indigenous peoples' issues into processes in the operational activities of the United Nations, taking into account the provisions of the Declaration and International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), along with other relevant instruments. The present action plan also builds on recommendations developed by the Inter-Agency Support Group on Indigenous Peoples' Issues in 2008 on integrating the Declaration and the Convention into the work of the United Nations system.

13. The United Nations system's work on indigenous peoples' issues is guided by the five country programming principles of the United Nations Development Group, namely: the human rights-based approach; gender equality; environmental sustainability; results-based management; and capacity development.

14. Under a human rights-based approach, the plans, policies and processes of development are anchored in a system of rights and corresponding obligations established by international law, including all civil, cultural, economic, political and social rights, labour rights and the right to development. A human rights-based approach to programming ensures that human rights standards and principles, such as equality and non-discrimination and participation and accountability, guide all phases of the programming process and facilitates a sharp focus on developing the capacity of duty-bearers to meet their obligations and that of rights-holders to claim their rights.

15. The principle of gender equality ensures that the present action plan takes into account the differential impacts of policies and programmes on women and men and girls and boys and, in particular, ensures that the multiple forms of discrimination that indigenous girls, adolescents and women experience are addressed through appropriate means identified in consultation with them and that such measures advance their empowerment.

16. The principle of environmental sustainability ensures that development meets the needs of the current generation without compromising the ability of future generations to meet their own needs; the present action plan takes into account this intergenerational imperative. It will ensure recognition of the close link between environmental factors and the realization of the rights and well-being of indigenous peoples, including the way indigenous peoples' traditional knowledge contributes to sustainable development, throughout the activities set out by the present action plan.

17. The action plan builds on the momentum and spirit of the 2014 World Conference on Indigenous Peoples and, to that end, will promote partnership and collaboration between the United Nations system, civil society organizations and multilateral bodies such as regional development banks and human rights special procedures and commissions.

18. The system-wide action plan will contribute to the fit-for-purpose agenda by ensuring stronger linkages between the normative and operational work of the

United Nations, increasing coordination and coherence in addressing the rights of indigenous peoples. It calls for strengthened United Nations senior level engagement, encouraging working with Member States in a spirit of partnership and cooperation to generate support for the implementation of the Declaration on the Rights of Indigenous Peoples. As such, the action plan implies the need to advance the rights and well-being of indigenous peoples, in the field and at headquarters, including by shared analysis, common strategies and greater accountability.

19. For the present action plan to be effectively implemented at the country level, it is important that United Nations resident coordinators are empowered and supported from the highest levels at headquarters. Only by ensuring adequate political traction at both the global and country levels, will the dialogues and programmes between indigenous peoples, Member States and the United Nations be fruitful in advancing the rights of indigenous peoples.

II. Elements of the action plan

A. Raise awareness of the Declaration on the Rights of Indigenous Peoples

1. Conduct a high-level awareness-raising initiative

20. The Secretary-General and other high-level United Nations officials will use their good offices to raise awareness of the United Nations Declaration on the Rights of Indigenous Peoples. Drawing upon key messages to be drafted and relevant recommendations made by the international human rights system, the indigenous-specific United Nations mechanisms and other relevant agencies, officials and spokespersons will reiterate the commitment of the United Nations system to the Declaration and its provisions and encourage ratification of ILO Convention No. 169. Activities will include advocacy and awareness-raising in speeches and statements, letters to United Nations country teams and others in the United Nations system, bilateral meetings with Member States and visits to indigenous peoples' communities. Substantive support to the Executive Office of the Secretary-General will be provided by the Department of Economic and Social Affairs.

2. Develop a succinct set of key messages based on the Declaration on the Rights of Indigenous Peoples

21. In the context of the awareness-raising initiative described above, messages will be developed that express the commitment of the United Nations system to the Declaration and to supporting its implementation. These messages will be aimed at raising awareness and building support for the rights of indigenous peoples among all key stakeholders at all levels (Member States, United Nations personnel, relevant civil society organizations and the general public). The messages should be derived from the Declaration and should be presented in a coherent manner that is useful to policymakers and practitioners. The messages will be developed by the Department of Economic and Social Affairs and the Department of Public Information in collaboration with members of the Inter-Agency Support Group.

3. Develop and launch a media and outreach campaign

22. In support of the high-level awareness-raising initiative, and taking advantage of existing communication channels within the United Nations system, a media and outreach campaign should be developed and undertaken using social media, United Nations websites, United Nations radio and television and other platforms, based on the agreed key messages. This could include infographics, photos, videos, exhibits, fact sheets, stories and opinion editorials by United Nations experts on indigenous peoples. This may also include the nomination of high-level or prominent champions of indigenous peoples, such as indigenous artists, actors, politicians and other public figures. This strategy will engage the network of United Nations information centres, services and offices in proactive promotion of United Nations activities vis-à-vis indigenous issues at the country and regional levels. This strategy will be developed by the Department of Public Information in close collaboration with the Department of Economic and Social Affairs and in cooperation with other interested United Nations partners.

B. Support the implementation of the Declaration on the Rights of Indigenous Peoples, particularly at the country level

1. Support national partners in the reform and implementation of legal frameworks, policies, strategies and plans to further the Declaration on the Rights of Indigenous Peoples, through joint programming and other initiatives

23. In the outcome document of the World Conference on Indigenous Peoples, Member States committed to developing and implementing national action plans, strategies and other measures to achieve the ends of the Declaration. They also committed to taking measures at the national level, including legislative, policy and administrative measures, to achieve the ends of the Declaration. Building on these commitments, Member States invited United Nations agencies, funds and programmes to support the implementation of national action plans, strategies and other measures to achieve the ends of the Declaration. United Nations country teams, the United Nations Development Programme and other agencies, funds and programmes will engage with Member States to support and promote these activities in cooperation with other interested United Nations partners.

2. Support the mainstreaming of the Declaration on the Rights of Indigenous Peoples and International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169) in national development plans and in common country assessments and United Nations Development Assistance Frameworks

24. In applying a human rights-based approach in its work with national partners and through the United Nations Development Assistance Frameworks in particular, United Nations country teams, in cooperation with other United Nations system partners, will promote the mainstreaming of indigenous peoples' rights. The United Nations Development Group programming principle of following a human rights-based approach, the Development Group Guidelines on Indigenous Peoples' Issues and the resource kit on indigenous peoples' issues provide a road map and tools for integrating indigenous peoples' issues into processes for programmes at the country level, including processes aimed at implementing the 2030 Sustainable Development Agenda. United Nations country teams through their work will also

promote recommendations pertaining to indigenous peoples emerging out of human rights mechanisms, including human rights treaty bodies, ILO supervisory bodies, special procedure mandates and the universal periodic review. Members of the Inter-Agency Support Group will ensure that United Nations country teams have access to expertise, data and other relevant sources of information on the rights of indigenous peoples in the preparation of common country assessments and Development Assistance Frameworks and in the 2030 Sustainable Development Agenda national level processes.

3. Promote the establishment or strengthening of consultative mechanisms and platforms of dialogue under the leadership of the resident coordinators

25. These consultative mechanisms will inform the operational activities of the United Nations country teams. They will also promote regular dialogue between indigenous peoples, State actors, the private sector and other relevant entities to foster trust and to advance the rights of indigenous peoples. Dialogues may also be held at the regional and global levels with relevant partners, such as intergovernmental regional mechanisms, development banks and regional inter-agency mechanisms. Support can also be delivered through the generation of evidence, analysis and knowledge exchanges related to indigenous peoples.

C. Support the realization of indigenous peoples' rights in the implementation and review of the 2030 Agenda for Sustainable Development

26. The 2030 Agenda for Sustainable Development aims to leave no one behind and to reach the furthest behind first. As a general principle, it is important to ensure that efforts by the United Nations system to assist Member States to achieve the Sustainable Development Goals include, where possible, a focus on indigenous peoples, who are among the furthest behind. Specifically the United Nations system should:

(a) Incorporate indigenous issues into programming to implement the 2030 Agenda and ensure such programming is consistent with the provisions of the Declaration on the Rights of Indigenous Peoples;

(b) Promote the participation of indigenous peoples in programmes, projects and other activities related to the implementation and review of the 2030 Agenda, including the participation of indigenous women, persons with disabilities, older persons, children and youth;

(c) Where possible, ensure that information is gathered and disseminated on progress in implementing the 2030 Agenda for indigenous peoples.

D. Map existing standards and guidelines, capacities, training materials and resources within the United Nations system, international financial institutions and the members of the Inter-Agency Support Group on Indigenous Peoples' Issues for the effective implementation of the United Nations Declaration on the Rights of Indigenous Peoples

27. The United Nations system is already engaged in promoting the implementation of the Declaration on the Rights of Indigenous Peoples through a range of activities. These include the collection and dissemination of information on the situation of indigenous peoples, with particular emphasis on research, statistical data collection, policy development and analysis, reports to human rights bodies and mechanisms and training materials. Some international agreements contain indicators of relevance to indigenous peoples and these are being put into operation, such as on traditional knowledge. Several organizations have either adopted specific policies and mechanisms of engagement with indigenous peoples or are in the process of doing so.

28. An exercise to map this wealth of information will not only provide an overview of the United Nations system's activities related to indigenous peoples, but will also support the creation of a central hub of information on indigenous peoples' issues within the system, for use by all partners. This would serve the purpose of identifying existing resources for effective and coherent action on indigenous peoples' issues and also facilitate the identification of gaps in knowledge and capacity for informed decision-making on further investments in resources for gathering evidence and developing capacity. For continuous updating of the proposed knowledge hub, this information will be provided each year by members of the Inter-Agency Support Group and consolidated by the Department of Economic and Social Affairs as part of the annual report to the annual sessions of the Permanent Forum on Indigenous Issues and other forums as requested.

E. Develop the capacities of States, indigenous peoples, civil society and United Nations personnel

1. Integrate indigenous peoples' issues into existing capacity development activities

29. The United Nations system already provides a wealth of training opportunities, including training in the human rights-based approach to programming, results-based management, monitoring and evaluation and training in the specific fields of each United Nations entity. Indigenous issues should be incorporated into these capacity development activities, as appropriate.

30. This should ensure, where appropriate and feasible: (a) common messaging in line with the Declaration; and (b) coordination within the United Nations system in terms of organization and production of materials. Capacity development will highlight the coherence and complementarity of the Declaration, ILO Convention No. 169 and core United Nations human rights treaties. This will be implemented by all relevant organizations that conduct capacity development, including the United Nations System Staff College.

2. Develop the capacities of United Nations staff at all levels

31. Initiatives will include:

(a) **Technical capacity development** in drafting and revision of national policy that is inclusive and consistent with the Declaration on the Rights of Indigenous Peoples, ILO Convention No. 169 and human rights treaties and standards, and in building on the United Nations Development Group Guidelines on Indigenous Peoples' Issues;

(b) **Regional and subregional training activities** or programmes carried out through the regional commissions and through the United Nations Development Group regional directors team's quality support and assurance group. Collaboration in this regard with regional institutions like the regional banks and regional and subregional organizations that have programmes dealing with indigenous peoples would be promoted;

(c) **Online capacity development on indigenous issues**. Online training and, where possible, accredited training, using train-the-trainer methodologies, to be developed as tools aimed at and for United Nations staff.

3. Capacity development for Member State officials

32. Indigenous peoples and Member States have identified a lack of knowledge about indigenous peoples and their issues and rights as one of the major obstacles to the implementation of the Declaration on the Rights of Indigenous Peoples. Capacity development of Member State officials should be accommodated in projects that target indigenous peoples, as well as other United Nations initiatives.

4. Training representatives of indigenous people's institutions and organizations

33. Some indigenous peoples lack the skills, access and resources to advocate effectively for their rights and well-being. It is important to focus specifically on indigenous peoples, especially those with a capacity to train others and disseminate information, from countries and/or communities that have limited access to resources. The Office of the United Nations High Commissioner for Human Rights and the World Intellectual Property Organization have dedicated indigenous fellowship programmes, and various other United Nations entities, including the Secretariat for the Convention on Biological Diversity and the United Nations Institute for Training and Research, organize trainings for indigenous peoples.

34. Support to indigenous-led capacity development through trainings should also be provided and integrated into development initiatives targeting indigenous peoples. All capacity development exercises aimed at indigenous peoples should include the participation of indigenous women, indigenous persons with disabilities and indigenous children and youth.

F. Advance the participation of indigenous peoples in United Nations processes

35. Although the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies is a matter that the General Assembly will continue to consider, the United Nations system can take

concrete and practical steps towards increased full and effective participation in processes that affect them. This can include consultative mechanisms, funds and tools for seeking free, prior and informed consent and other means for facilitating full and effective participation of indigenous peoples, including indigenous women, elders, persons with disabilities and indigenous children and youth.